

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1280

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

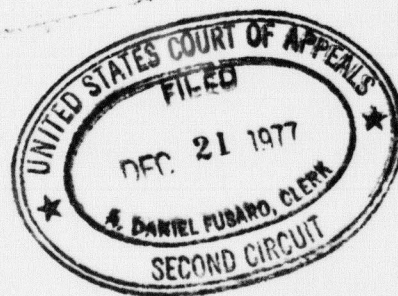
v.

JUAN RAMON VASQUEZ a/k/a "RAMON RAMOS",
Defendant-Appellant.

*On Appeal From a Judgment of the United States
District Court For the Southern District
of New York*

APPELLANT'S APPENDIX

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DOCKET ENTRIES

Show last names and suffix numbers of other defendants on same indictment information		Urbina-06, Agosto-07, Narvaez-08	
REYES, X, VASQUEZ, X, LUGO, X, COLON, X		Reyes-02, A. Vasquez-03, Lugo-04, Colon-05	
DATE	DOCUMENT NO.	PROCEEDINGS	EXEMPTIBLE DELAY
2/9/77		Complaint filed, represented by Paul Lieber, 86 Clinton St., N.Y. Defendant remanded into the custody of U.S. Marshal in lieu of \$50,000 cash/surety	
2/18/77		Indictment filed, 77 Cr. 77 Cr. 133 Tenney, J.	
2-24-77		Deft. (atty. Paul Lieber for arraignment purposes only) pleaded not guilty. Deft. continued remanded in lieu of bail fixed at \$50,000. Case assigned to Pierce, J. for all purposes. Frankel, J.	
3/2/77		Conference Held - Dft. Juan Vasquez present - his atty Sidney Marks not present - Trial set for April 5, 1977 @ 9:30. Bail hearing held as follows. Dft. Juan Vasquez - bail remains at \$50,000 cash.....Pierce J.	
3/11/77		Filed CJA 23 Financial Affidvt. Affidvt. Reviewed by Judge Frankel in Part I. CJA assigned by Mag. Office.	
3/15/77		Filed Dfts. Notice of Motion for an order Dismissing indictment, severance & separate trial, bill of particulars. Ret. 3/17/77.	
3/15/77		Filed Dfts. Memorandum of Law.	
		-over-	

104M 40-256

3-22-77 Filed Superseding Indictment & referred to Pierce, J.
.....Metzner, J.

3-15-77 Conference held - all dfts. present except dft. Lugo, Dfts. Colon, Astorga & Concepcion are arraigned. All (3) dfts. plead not guilty as charged. Bail as to dfts. Concepcion & Astorga fixed at \$25,000 cash or surety. Both Dfts. Remanded in lieu of bail. As to Dft. Colon bail is fixed at \$10,000 PRY sec. by 10% cash Bail limits - Southern Dist of N.Y. only and dft. is to report weekly to her atty. David Zapp who will then notify AUSA. Trial begins April 5, 1977 as previously scheduled.....
.....Pierce J.

3-24-77 Filed Govts. Memorandum of Law.

3-24-77 Filed Govts. Affidvt in opposition to dfts. pre trial motions ~~of dfts.~~ of dfts. Lugo, Urbina, Astorga & Juan Ramon Vasquez.

3-28-77 Filed deft's affidvt & notice of motion for the reduction of bail fixed at \$50,000., to amt. of \$10,000. Ret. 3-29-77.

3-28-77 Filed Govts. Affidvt. in opposition of motion of dft. to reduce bail.

3-30-77 Filed Govts. Request to Charge.

3-30-77 Filed Dfts. Request to Charge.

3-30-77 Filed Dft. Juan Ramon Vasquez Request for Voir Dire of the Jury.

3-31-77 Dft. Juan Ramon Vasquez (Atty. Sidney Marks) Pleads not guilty. Dft. Cont'd remanded in lieu of \$50,000 C/S. bail.....Metzner J. Entire case referred to Pierce J as being related to & superseding 77 Cr. 133 (LWP) All bails previously fixed in superceded indictment are to apply to this indictment.....Metzner J.

3-31-77 Filed Order. Motions Denied in part & granted in part.....
.....Pierce J. (mailed notice) J.

4-1-77 Filed Notice of Appearance by Sidney Marks, 300 West End Avenue NYC 10023. 874 - 1138.

4-1-77 Filed Govts. Bill of Particulars.

4-6-77 Filed Memo. End. on motion dtd. 3-15-77. Motion to dismiss Sever. bill of particulars, Denied in part & granted in part, Etc.....Pierce J. (mm)

4-6-77 Filed Memo. End. on motion dtd. 3-28-77. Motion for reduction of bail denied.....Pierce J. (mm)

4-6-77	Jury Trial begins as to dfts. Juan Vasquez, Colon & Narvaez on Counts as charged.
4-7-77	Trial Cont'd
4-11-77	" "
4-12-77	" "
4-13-77	" "
4-14-77	" "
4-14-77	Filed Order. Accordingly, the objections are sustained & the Testimony in question is stricken from the record,....Pierce J. (mm)
4-19-77	Filed Govts. Memorandum of Law.
4-19-77	Filed Govts. Supplemental Request to Charge No. 3A.
4-19-77	Filed Govts. Supplemental request to Charge Nos. 1A & 2A.
4-19-77	Filed Govts. Supplemental Request for the Voir Dire.
4-19-77	Filed Dfts. Preliminary instruction to Jury.
4-18-77	Trial Cont'd - Court Charges Jury. Jury returns with a partial verdict as to dft. Vasquez. Jury finds dft. Juan Ramon Vasquez Guilty on Count 1.
4-19-77	Trial Cont'd - Deliberations cont'd - Jury finds dft. Juan Raman Vasquez Guilty on each of cts. 2,3,4 & 5. P.S. I. Ordered. Sentence June 6, 1977 @4:30. Dft. cont'd Remanded in lieu of bail fixed at \$50,000.C/S.....Pierce J.
4-21-77	Filed Dfts. Juan Ramon Vasquez Supplemental Requests to Charge Nos. 1A through 8A.
5-13-77	Filed Dfts. Presentence Memorandum of
5-13-77	Filed transcript of record of proceedings dated 4-7, 11, 13-77
5-13-77	Filed transcript of record of proceedings dated 4-14, 18, 19-77
6-1-77	Filed dfts. Supplement to Pre Sentence Memorandum.
6-7-77	Filed Notice of Appeal on Judgment entered on 6-6-77.
6-27-77	Filed transcript of record of proceedings dtd: June 6-77.

A TRUE COPY

RAYMOND F. BURGHARDT, Clerk

By *[Signature]* Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

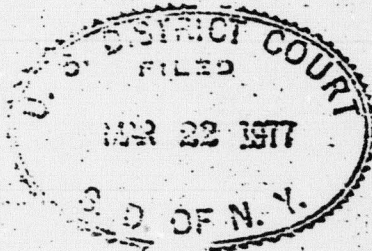
-v-

JUAN RAMON VASQUEZ,
a/k/a "Ramon Ramos",
LUIS ANGEL REYES,
AUREA VASQUEZ
a/k/a "Gloria Montalvo",
PEDRO LUGO,
ENRIQUETA COLON,
a/k/a "Catina",
GABRIEL URBINA-ASTORGA,
JOSE A. AGOSTO-CONCEPCION,
a/k/a "Indio" and
JOHN NARVAEZ,

Defendants.

(S) 77CR 133

INDICTMENT
S 77 Cr. 133 (LMP)



The Grand Jury charges:

1. From on or about the 1st day of October, 1976 and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos", LUIS ANGEL REYES, AUREA VASQUEZ, a/k/a "Gloria Montalvo", PEDRO LUGO, ENRIQUETA COLON, a/k/a "Catina", GABRIEL URBINA-ASTORGA, JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio", and JOHN NARVAEZ the defendants and others to the Grand Jury known and unknown, unlawfully intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I

LM

narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. On or about January 3, 1977, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, went to the River Bend East Bar, 133 Avenue D, New York, New York.
2. On or about January 3, 1977, LUIS ANGEL REYES, the defendant, delivered approximately 34.44 grams of heroin to another at the River Bend East Bar, 133 Avenue D, New York, New York.
3. On or about January 6, 1977, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, had a conversation at Feathers Restaurant, 24 Fifth Avenue, New York, New York, concerning the receipt of two and one half kilograms of heroin from Chicago.
4. On or about January 7, 1977, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES the defendants, had a conversation at Feathers Restaurant, 24 Fifth Avenue, New York, New York concerning the price of heroin in Chicago.
5. On or about January 7, 1977, LUIS ANGEL REYES, the defendant, delivered approximately 173.10 grams of heroin to another at Feathers Restaurant, 24 Fifth Avenue, New York, New York.

6. On or about January 11, 1977, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, had a conversation at Apartment 13, 713 East 9th Street, New York, New York, concerning the price and availability of heroin in Chicago.

7. On or about January 12, 1977, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, held a meeting at Apartment 13, 713 East 9th Street, New York, New York.

8. On or about January 12, 1977, LUIS ANGEL REYES, the defendant, delivered approximately 48.77 grams of heroin to another at Apartment 13, 713 East 9th Street, New York, New York.

9. On or about January 26, 1977, JUAN RAMON VASQUEZ a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, held a meeting at Apartment 13, 713 East 9th Street, New York, New York.

10. On or about January 26, 1977, LUIS ANGEL REYES, the defendant, delivered approximately 457.63 grams of heroin to another at Apartment 13, 713 East 9th Street, New York, New York.

11. On or about January 28, 1977, JUAN R. VASQUEZ, a/k/a "Ramon Ramos", the defendant, had a conversation with two individuals at Apartment 13, 713 East 9th Street, New York, New York concerning the price and availability of 200 ounces of heroin in Chicago.

12. On or about January 31, 1977, JUAN VASQUEZ, a/k/a "Ramon Ramos" and PEDRO LUGO, the defendants, had a conversation at Apartment 13, 713 East 9th Street, New York, New York concerning the price and availability of kilograms of heroin in Chicago.

13. On or about February 1, 1977, JUAN VASQUEZ, a/k/a "Ramon Ramos", AUREA VASQUEZ, a/k/a "Gloria Montalvo", and PEDRO LUGO, the defendants, had a conversation at Francesco's Italian Ristorante, 1690 York Avenue, New York, New York, concerning the sale of 4 or 5 kilograms of heroin.

14. On or about February 2, 1977, JOHN HARVAEZ and AUREA VASQUEZ, a/k/a "Gloria Montalvo", the defendants, had telephone conversations.

15. On or about February 4, 1977, JUAN VASQUEZ, a/k/a "Ramon Ramos" and AUREA VASQUEZ, a/k/a "Gloria Montalvo", the defendants, held a meeting at 713 East 9th Street, New York, New York.

16. On or about February 5, 1977, JUAN VASQUEZ, a/k/a "Ramon Ramos" and AUREA VASQUEZ, a/k/a "Gloria Montalvo", the defendants, traveled by airplane from New York to Chicago and met with ENRIQUETA COLON, a/k/a "Catina", the defendant, at 31-28 West Cortland Street, Chicago, Illinois.

17. On or about February 6, 1977, AUREA VASQUEZ, a/k/a "Gloria Montalvo", ENRIQUETA COLON, a/k/a "Catina" and JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio", the defendants, had a conversation at 31-28 West Cortland Street, Chicago, Illinois.

18. On or about February 6, 1977, AUREA VASQUEZ, a/k/a "Gloria Montalvo", and JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio", the defendants, examined \$110,000 in cash in the vicinity of Kelsey and Cortland Streets, Chicago, Illinois.

19. On or about February 8, 1977, ENRIQUETA COLON, a/k/a "Catina", and JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio", the defendants, delivered a sample of approximately 25.4 grams of heroin to another at 31-28 West Cortland Street, Chicago, Illinois.

20. On or about February 8, 1977, GABRIEL URBINA-ASTORGA, the defendant, traveled from Chicago to Aurora, Illinois.

21. On or about February 8, 1977, in Chicago, Illinois, GABRIEL URBINA-ASTORGA, the defendant, drove a car which had approximately 3,122.8 grams of heroin in its trunk.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

On or about the 3rd day of January, 1977 in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 34.44 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 7th day of January, 1977 in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance to wit, approximately 173.10 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 12th day of January, 1977 in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 48.77 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

On or about the 26th day of January, 1977 in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 457.63 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

Marion F. Jordan
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

A TRUE COPY
RAYMOND E. BURGHARDT, Clerk

(S) 77CR133

Form No. USA-22a-274 (2d. 4-22-66)
United States District Court
EASTERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.
JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos", LUIS ANGEL REYES, AUREA VASQUEZ, a/k/a "Gloria Montalvo", PEDRO LUGO, ENRIQUETA COLON, a/k/a "Catina", GABRIEL URBINA-ASTORGA, JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio" and JOHN NARVAEZ,

Defendants.

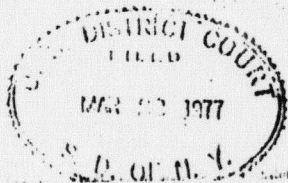
INDICTMENT

S 77 Cr. 133 (LWP)

Title 18, U.S.C. § 2, Title 21, U.S.C. §§ 812, 841(a)(1), 841(b)(1)(A) and 846.

ROBERT B. FISKE, JR.
United States Attorney.
A TRUE BILL

Manon & Jordan
Foreman.



March 22, 1977 - filed indictment. Pierce as relates and superseding
77 Cr. 133 (LWP). Metzger.

March 22, 1977 - Dept Reyes present w/att Ed. Panzer - Dept pleads not guilty on counts 1 + 2. Dept pleads guilty on each of cts 3, 4 + 5 of this superseding indictment. PSI ordered - Sentence April 25, 1977 at 5 PM application for reduction of bail denied. Bail remains at \$25,000 cash or surety as previously fixed on Ind. 77Cr. 133. Dept Reyes is rolled on Ind. 77Cr. 133 upon Government's application. Pierce

March 24, 1977 - Dept Aurea Vasquez present with her atty Paul Lieber - Dept is arraigned on the superseding indictment + pleads guilty on count 1. PSI ordered. Sentence May 5, 1977 at 4 PM Bail remains at \$50,000 PRB unsecured, cosigned by Maria + Anna Rodriguez. Government moves to roll on dep Ind 77Cr 133 as to dep A. Vasquez. Hanson Motion granted. Pierce

(over) ->

wh 31, 1977 - Dept. Juan (Jamon Vasquez) (Sidney Marks)
is not guilty. Dept. continued remanded in lieu of
\$25,000 c/s. bail.

Dept. Pedro Lugo (Atty: James P. McGovern) pleads
guilty. Dept. continued remanded in lieu of bail fixed
at \$25,000 c/s.

Dept. John Narvaez (Atty: Jack Lipson) pleads
guilty. Dept. continued remanded in lieu of bail
fixed at \$25,000 c/s.

Dept. Enriqueta Colon (Atty: David Zapp)
is not guilty. Dept. free on bail, i.e. \$10,000. PRB records
10% cash. Dept. to comply with other conditions of bail as
stated in superseded indictment.

Dept. Gabriel Urbina - Astorga (Atty: Richard
Seltzer) (sworn for arraignment purposes only) pleads not guilty.
rough interpreter Richard Schoen (sworn). Dept.
continued remanded in lieu of bail fixed at \$25,000 c/s.

Dept. Jose Agosto - Concepcion (dept. not present
counsel present). Court directs a not guilty plea be
entered. Dept. continued remanded in lieu of bail fixed
at \$25,000 c/s.

Entire case referred to Pierce as being related
and superseding 77 CR. 133 (LWP). All bails
previously fixed in superseded indictment are to apply to
this indictment.

Metzger.

and 5. Dept. Concepcion present w/ Atty. Helena Solis - as
arraigned on new superseding indictment. Dept. pleads guilty on count 1. PRB
is dismissed on the superseded indictment. Sentence May 4, 1977 at 4 PM. Bail
cont. Dept. Lugo present w/ Atty. James McGovern - Dept.
withdraws plea of not guilty and pleads guilty on count 1. PRB
ordered. Sentence May 4, 1977 at 4 PM. Bail waived as to
dept. Lugo. Bail reduced to \$15,000 surety bond. Both depts.
remanded in lieu of bail. Dept. Lugo dismissed on the superseded
indictment.

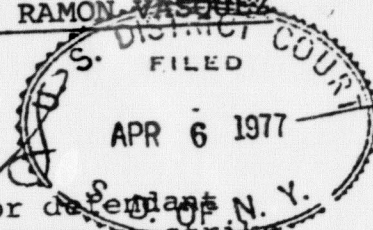
... to supersede indictment (170C.13). (170C.13) Dept
... to file notice of appeal

June 2, 1977 - Dept Colon present w/attorney [unclear] [unclear]
Three (3) years on count 1. Pres. [unclear] 21, USC 84
Dept placed on special parole for a term of 3 years, to
commence upon expiration of sentence. Dept [unclear].
Dept is dismissed on the superseded indictment. (170C.13)

June 6, 1977 - Dept Juan Lamon Vasquez present w/attorney Sidney
Marks. Dept sentenced to Ten (10) years on each
of counts 1 thru 5 inclusive, to run concurrently with
each other. Dept placed on Spec Parole for a term
of Three (3) years to commence upon expiration of sentence.
Dept [unclear]. Dept is dismissed on the superseded
indictment 170C.13. [unclear]

June 9, 1977 - Dept Lugo present w/attorney James McBoone
Sen (6) year on count 1. Dept placed on special parole
for a term of Six (6) years to commence upon
expiration of sentence. Dept to receive credit for
time served in Federal custody from 2/5/77 to the
day [unclear]. Dept dismissed on superseded
indictment. [unclear]

ENDORSEMENT ORDER



By the attached papers, counsel for defendant Juan Ramon Vasquez moves to dismiss Count One or to strike surplusage therein, for a severance, for a bill of particulars, and for certain discovery. Since the filing of this motion, the government has filed a superseding indictment, which adds certain new alleged overt acts and extends the period of the alleged conspiracy back to October 1, 1976. References will be made to the superseding indictment only.

Motion to Dismiss or Strike

Defendant claims that the first count of the indictment is a "patchwork of unrelated incidents that have no stated underlying scheme" and relies upon cases decided under the Labor Management Relations Act and statutes prohibiting dealing in stolen securities to argue that the count must be dismissed for lack of material allegations or stricken for surplusage. The motion is without merit.

Count One tracks the language of the conspiracy statute in question, 21 U.S.C. §846. This is sufficient to charge the offense of drug conspiracy. See United States v. Bermudez, 526 F.2d 89, 94 (2d Cir. 1976). It is not even necessary for the government to charge an overt act under 21 U.S.C. §846. Id. Accordingly, the motion to dismiss must be denied.

The motion to strike is also without merit. Defendant urges that the failure of the 14th through 21st alleged overt acts to identify certain "individuals"; set forth the "nature" of certain gatherings, the "reason" for certain meetings, and the "reason" for the trip to Chicago, as well as their failure to identify the moving defendant with the overt acts charged in allegations 17 through 21 render the allegations of those paragraphs surplusage.

A motion to strike is addressed to the discretion of the trial court, and language in the indictment should be stricken only if it contains inflammatory and irrelevant prejudicial matter. See United States v. Courtney, 257 F.2d 944, 947 (2d Cir. 1958). Defendant has made no showing that any of the challenged items are either inflammatory or irrelevant. Indeed, the challenged items allege a series of acts in furtherance of the conspiracy charged. Nor need a given defendant be charged in every overt act, since liability for conspiracy may be derived from the acts of co-conspirators. United States v. Cirillo, 468 F.2d 1233, 1239 (2d Cir. 1972), cert. denied, 410 U.S. 989 (1973). The motion is denied.

MICROFILM

Motion to Sever

In an attorneys affidavit, defendant Vasquez claims that a joint trial will prevent him from calling his co-defendants to the stand. Counsel states that he has "interviewed" one of the other defendants, but there is no claim that any of the other defendants stands willing to testify on Vasquez' behalf, nor is there any description of what the defendant(s) allegedly would say to exculpate Vasquez. Under these circumstances, the severance motion is without merit on its face and must be denied. See United States v. Carella, 411 F.2d 729 (2d Cir.), cert. denied, 396 U.S. 860 (1969); United States v. Caci, 401 F.2d 664 (2d Cir. 1968), vacated on other grounds, 394 U.S. 310 (1969).

Vasquez' alternative argument, that a joint trial will deprive him of the right to comment upon the failure of his co-defendants to take the stand, is not based upon the law of this Circuit. See United States v. Marquez, 319 F.Supp. 1016, 1019 (S.D.N.Y. 1970) (Weinfeld, J.), aff'd, 449 F.2d 89 (2d Cir. 1971), cert. denied, 405 U.S. 963 (1972). Indeed, even in the case relied upon, the language to the effect that a defendant has a right to comment upon the failure of a co-defendant to testify is but dicta. See DeLuna v. United States, 308 F.2d 140 (5th Cir. 1962); see also United States v. Kaufman, 291 F.Supp. 451, 453-54 (S.D.N.Y. 1968).

Finally, Vasquez seeks a severance on the ground that self-incriminatory statements by his co-defendants may have a spill-over effect upon him when admitted under the conspiracy count. It appears that Vasquez seeks to raise an issue under Bruton v. United States, 391 U.S. 123 (1968). The point is without merit. There is no claim by Vasquez that his co-defendants' statements will incriminate him, but only that there will be an "indirect" effect upon Vasquez. This allegation is insufficient to raise a Bruton problem, and a cautionary instruction to the jury as to against whom the statements may be used will be more than sufficient to safeguard Vasquez' sixth amendment rights.^{1/} See United States v. Wingate, 520 F.2d 309, 311 (2d Cir. 1975); see also United States v. Finkelstein, 526 F.2d 517, 528 (2d Cir. 1975). Motion to sever denied.

^{1/} The Court suggests that the government take heed of the admonition in United States v. Glover, 506 F.2d 291, 298 n. 14 (2d Cir. 1974) concerning pre-trial disclosure of statements which might raise a Bruton problem.

Bill of Particulars

The Court's rulings on defendant's motion pursuant to Rule 7(f) Fed.R.Cr.P. are as follows:

13a. Here the government has agreed to furnish the names of all unindicted co-conspirators known to it, but has refused to provide addresses. Motion granted to the extent consented to by the government; otherwise denied. United States v. Dioguardi, 332 F.Supp. 7 (S.D.N.Y. 1971).

13b. The government resists a request for particulars stating whether any of the defendants named in any count or overt act was acting on behalf of the government at the time of the act. The request is a legitimate one and the government is directed to answer it. See United States v. Bouza, 234 F.Supp. 15, 16 (E.D.N.Y. 1964); United States v. Vasquez, 25 F.R.D. 350 (S.D.N.Y. 1958).

13c. The government opposes a request for the last known address of Vasquez' co-defendants. While technically a request for discovery rather than for particularization, such matters are a proper subject of disclosure. Motion granted. United States v. Curry, 278 F.Supp. 508 (N.D. Ill. 1967).

13d. The government has consented to disclosure to Vasquez of his own criminal record, but opposes disclosure of the records of his co-defendants. The government's response is sufficient. Dioguardi, supra, 332 F.Supp. at 19-20.

13e. The defendant is not entitled to a description of overt acts not set forth in the indictment. Motion denied. United States v. Ianelli, 53 F.R.D. 482 (S.D.N.Y. 1971).

13f. The government has answered this request in full. Granted to the extent consented to.

13g-h. The government has consented to the request for particularization of the approximate date, time and place of the acts charged; it has also agreed to furnish its chemists' reports. The government has stated that there has been in this case no surveillance other than consent recordings, to the knowledge of the government in this district and of the government agents. The government has already permitted discovery of the consent tape recordings, and of surveillance photographs, if any. All other requests herein are opposed. The Court's rulings are only on the disputed items; all other requests are granted to the extent consented to only.

(g) (1)(B), (C), (E) and (G). A defendant may not demand a bill specifying the substance of a given conversation (B), or the names and addresses of persons not named as co-conspirators who may be government witnesses (C), or the details of the "relationship" between the moving defendant and his co-conspirators, or the manner in which the government learned of a telephone call alleged as an overt act (G). The purpose of Rule 7(f) is to give fair notice and prevent surprise, see United States v. Bernstein, 533 F.2d 775, 787 (2d Cir. 1976), not to compel an early disclosure of the evidence or theory of the government's case. United States v. McCarthy, 292 F.Supp. 937, 940 (S.D.N.Y. 1968). Motion granted to extent consented to only.

(h) (2), (3), (4), (5), (6) and (8). For the same reasons, the defendant may not have disclosure of the "manner" of possession and distribution; the names and addresses of third parties who received the drugs or who were present; whether monies were paid to Vasquez and the sums, denominations, and packaging thereof; who passed the monies; what form and in what container the heroin was held; or the names, aliases, and addresses of prospective government witnesses. See United States v. McCarthy, *supra*; see also United States v. Cannone, 528 F.2d 296 (2d Cir. 1975). Motion granted to the extent consented to only.

Motion for Discovery and Inspection

5a. The government has consented to disclosure of Vasquez' post-arrest written or recorded statements, but does not address the request for similar pre-arrest statements. If such written or recorded pre-arrest statements exist, the government must disclose them. Fed.R.Cr.P. 16(a)(1)(A). The Court need not address the government's argument regarding oral statements since such are not requested here. Granted to the extent indicated; otherwise denied.

5b. The government has stated that it has no grant jury testimony of Vasquez; defendant's request for wholesale disclosure of the grand jury minutes is denied since Rule 16(a)(1)(A) does not provide for such disclosure and since defendant makes no showing of "particularized need" such as would warrant disclosure of such matters pursuant to Rule 6(e) Fed.R.Cr.P. See United States v. Weinstein, 511 F.2d 622, 627 (2d Cir. 1975). Motion denied.

6. Consented to; granted to that extent only.

7. Here Vasquez seeks certain books, papers, documents, tangible items and objects which are in the possession of the government. The government's consent

tracks the language of Rule 16(a)(1)(C), i.e., the prosecutor consents to disclose such items which he intends to use as evidence in chief at trial. The consent is sufficient, and the balance of the request, which seeks matters which will not be used as evidence in chief at trial, is denied since it seeks all the minutia of the government's evidence and since Vasquez makes no showing of materiality to the preparation of his defense. See United States v. Fioravanti, 412 F.2d 407, 411 (3d Cir.), cert. denied, 396 U.S. 837 (1969); United States v. Cobb, 271 F.Supp. 159 (S.D.N.Y. 1967).

8a. This is a request for Brady material, and the Court finds sufficient the government's representation that it will comply with Brady at the appropriate time. See United States v. King, 49 F.R.D. 51, 53-54 (S.D.N.Y. 1970). Motion granted to the extent of the consent; otherwise denied.

8b. This final request seeks wholesale disclosure of the names, etc., of "all persons the Government knows to possess relevant information to the charges" This request is unreasonably broad and is accompanied by no showing of materiality to the preparation of a defense. Accordingly, it is denied in all respects. See United States v. Jordan, 399 F.2d 610, 615 (2d Cir.), cert. denied, 393 U.S. 1005 (1968); United States v. Weizer, 76 Cr. 414 (S.D.N.Y. Sept. 17, 1976).

Motion to Inspect Grand Jury Minutes

For the reasons stated in the Court's ruling on defendant's Request 5b above, the motion for an inspection of the grand jury minutes is denied since the motion is based upon conclusory allegations of counsel and since defendant demonstrates no particularized need to inspect any specific matters. Motion denied.

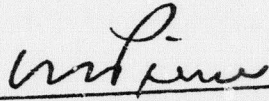
Conclusion

Defendant Vasquez' motion to dismiss Count One or to strike portions thereof is denied. The motion to sever is denied. The motion for a bill of particulars, items 13b and 13c only, are granted. All other requests for a bill which exceed the extent of the government's consent thereto are denied. Item 5a of the motion for discovery and inspection is granted. The remainder of the requests for discovery are granted to the extent of the government's consent and otherwise denied. The motion to inspect grant jury minutes is denied.

In light of the imminent trial date, the government is directed to make available to counsel for the defendant all matters which have been consented to or which have been ordered by this Court within twenty-four hours from the entry of this order.

SO ORDERED.

Dated: New York, New York
March 31, 1977



LAWRENCE W. PIERCE
U. S. D. J.

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UNITED STATES OF AMERICA

vs.

S-77 Cr. 133(LWP)

JUAN RAMON VASQUEZ et al.,
Defendants.

New York, N. Y.

April 18, 1977 - 3:15 p.m.

(Jury in box:)

THE CLERK: The Court is about to charge the jury. All spectators wishing to leave the courtroom will please do so now or remain seated until the completion of the Court's charge.

MR. McNAMARA: Your Honor, before the Court begins, there was one subject that had been discussed outside of the jury's presence before lunch. Does the Court believe that subject has been handled in a final manner, or should it be brought up for discussion again?

THE COURT: Nothing further.

CHARGE OF THE COURT

THE COURT: (Pierce, D. J.) Counsel, Mr. Foreman and ladies and gentlemen of the jury:

Let me thank you for extending yourselves to accommodate the hours which have been demanded of you. It is not

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the usual course that a time schedule such as occurred in this case would be the hours for a trial here, but every now and then it happens, and under the circumstances we were faced with it was necessary to ask you for your cooperation, and we thank you for the cooperation and the sacrifices which you have made which enabled us to go forward in this fashion.

We also thank you for your service on this jury. By serving on the jury you make an important contribution to the fair and impartial administration of justice, and for that we are all indebted to you.

I also wish to thank the attorneys in this case for their conduct during the trial. They have represented their respective clients' positions with care and dedication.

I ask you now to pay careful attention to what I am about to state to you by way of instructions as to the law which applies in the case. I ask you to keep in mind that every week in this courthouse juries struggle with these principles and apply them to the evidence presented in cases before them, just as you are going to be asked to struggle with these principles and apply them to the evidence presented before you.

Furthermore, if you wish any portion of this charge reread because you didn't follow it or didn't understand it or for whatever reason, you have but to send out a note

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indicating what portion of the charge you wish reread, and that will be reread to you.

First let me point out some general principles as to your duty as to what you should consider and not consider during your deliberations.

As you have heard, it is the Judge's function to instruct you as to the law which applies in the case, and it is your duty to accept the law as I state it to you, and it is your duty to apply the law to the facts in this case as you find those facts to be from the evidence in the case. I ask you not to single out any one instruction alone as stating the law but rather to consider the instructions as a whole.

The logical result of your application of the law to the facts as you find them in this case should be a verdict.

You are the exclusive judges of the facts in this case. You are the ones who must pass upon the weight of the evidence. You must determine the credibility of the witnesses. You must resolve any conflicts which exist in the evidence. You are to draw such reasonable inferences as may be warranted by the evidence in the case.

With respect to any matters of fact, it is your recollection and only yours which governs. Anything the attorneys for any party here may have said with respect to

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any matters in evidence or as to any factual matters is not to be substituted for your own independent recollection of the evidence or of the facts in this case, and anything which I have said or may say with respect to any matters in evidence or as to any factual matters is not to be substituted in lieu of your own independent recollection.

You are not to assume that I have any opinion as to whether or not any of the defendants is guilty or not guilty or as to the truth or falsity of the charges asserted in this indictment. The fact that I have asked questions, granted or denied motions in the course of the trial is not to be taken by you as an indication that any of the defendants is believed by the Court to be guilty or not guilty.

Further,, the attorneys have the right on the offer to certain evidence to press legal objections, and in doing so, they are simply performing their duty.

In your deliberations to determine the facts and whether the Government has established the elements of the crimes charged, you are to consider solely the testimony which you have heard from the witnesses and any tapes which have been received into evidence. You are to consider any stipulations of fact the lawyers have agreed upon and the exhibits which have actually been received into evidence and even any lack of material evidence, but nothing else.

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2 I told you earlier in the trial that certain evi-
3 dence was being received subject to connection. I have in-
4 structed you that I have found that this evidence was con-
5 nected and thus that it might be considered by you, along
6 with all other evidence in the case, and please remember that
7 this ruling does not in any way represent a finding by this
8 Court as to what the facts are. That determination must be
9 made by you, the jury. I have simply ruled that the evidence
10 in this case must be considered by you in your function of
11 deciding what the facts are.

12 In the determination of whether a defendant is
13 guilty or not guilty of the crimes charged, you must remember
14 that guilt is personal and that the determination of whether
15 a defendant is guilty or not guilty must be determined solely
16 on the evidence admitted as to the defendant you are consider-
17 ing.

18 The indictment names eight defendants in all. Only
19 three are on trial before you. They are the only persons
20 whose guilt or innocence you must announce in your verdict,
21 although, as I will explain to you shortly, in considering
22 whether any of these persons is guilty or not guilty, you
23 may have to determine the nature of the participation, if
24 any, of the named or alleged co-conspirators.

25 In making your determination of whether a defendant

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is guilty or not guilty, you must bear in mind that guilt is personal. Whether a defendant is guilty or not guilty must be determined separately as between defendants, and you must assess the evidence with respect to the defendant you are considering solely on the basis of the evidence presented against that defendant or the lack of evidence against that defendant.

The case of each defendant stands or falls upon the proof or lack of proof of the charges against the particular defendant you are considering and not against somebody else.

As you approach the performance of your function in this case, that is, the determination of whether each of the defendants is guilty or not guilty, please remember that it is your duty to weigh the evidence calmly and dispassionately and without sympathy or prejudice for or against any party. The fact that the Government is a party here or that the prosecution is brought in the name of the United States of America entitles it to no greater consideration than that accorded to any other party in this case, and, by the same token, it is entitled to no less consideration. All parties, Government and individuals alike, stand equal before the law.

Each of the three defendants on trial here has

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pleaded not guilty to the count or counts in which they are charged. Consequently, if any defendant is to be convicted, the Government has the burden of proving each and every element of the crimes charged against that defendant beyond a reasonable doubt.

I am going to tell you more about what those elements are, somewhat later.

The burden of proving guilt beyond a reasonable doubt never shifts. It remains upon the Government throughout the trial. The law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence. You may draw no unfavorable inference against a defendant because he or she did not take the stand and testify. In addition, you may not speculate as to why a defendant chooses not to testify. Nor may you speculate as to what a defendant might have stated had he or she chosen to testify.

In every criminal case there is a constitutional rule which every defendant has the right to rely upon. It is the rule that no defendant is compelled to take the witness stand. It is the prosecution which must prove a defendant guilty as charged beyond a reasonable doubt. A defendant is not required to disprove anything. He or she is not required to establish his or her lack of guilt.

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Also, a defendant has no obligation to call any witnesses on his behalf or offer any evidence whatsoever.

In short, it is up to the Government to prove beyond a reasonable doubt every element of the crimes charged in the indictment.

Each of the three defendants on trial is presumed to be not guilty of the accusations contained in the indictment, and this presumption continues throughout the trial and even during the course of your deliberations in the jury room; and so the presumption of innocence is sufficient to acquit a defendant of crimes charged unless the presumption is overcome by evidence that satisfies your mind beyond a reasonable doubt of the guilt of the defendant you are considering.

Unless you are so satisfied, it is your sworn obligation to find that defendant not guilty. If you are so satisfied, it is your sworn obligation to find that defendant guilty.

So the question arises: what is a reasonable doubt? It is a doubt which a reasonable person has after carefully weighing all the evidence. It is the kind of doubt which would make you hesitate to act in the most important affairs of your own life.

A reasonable doubt is a doubt which appeals to your

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reason, your judgment, your common sense and your experience. It is not caprice or whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty, nor is it sympathy for any party.

If after a fair and impartial consideration of all of the evidence or lack of evidence you can honestly say that you do not have an abiding belief as to the guilt of the defendant you are considering, then you have a reasonable doubt, and it is your duty to acquit.

On the other hand, if after a fair and impartial consideration of all of the evidence you can honestly say that you do have an abiding belief as to the guilt of the defendant you are considering, then you have no reasonable doubt, and it is your duty to convict.

A reasonable doubt does not mean positive certainty, beyond all possible doubt. The law in a criminal case is that it is sufficient if the guilt of the defendant is established beyond a reasonable doubt, not beyond all possible doubt.

From time to time you may have heard reference made to direct evidence and to circumstantial evidence. Let me say a word about the difference between the two.

Direct evidence is where a witness testified to what he or she saw, heard or observed, what he or she knows

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of his or her own knowledge, something which comes to the witness by virtue of his or her senses. That is direct evidence.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind.

To state it somewhat differently, circumstantial evidence is a fact or a series of facts in evidence which have a logical tendency to lead the mind to the conclusion that another fact exists, even though there is no direct evidence to that effect.

Let me give you a brief example.

If when you filed out of this courtroom during a recess you could see that it was raining outside, and all of the windows in the courtroom were closed and you saw that this was so, and all of the window sills beneath the windows were dry, but it was still raining outside. Then, after a ten- or fifteen-minute recess, you came back to the courtroom, only to find that all of the windows were still closed, and you see that it is still raining, but now the sills are all wet.

You could conclude that someone had opened the windows and that rain had come into the courtroom and fallen upon those window sills, and you would arrive at such a con-

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2 clusion from circumstantial evidence. In other words, you
3 would infer on the basis of reason and common sense from
4 one or more established facts the existence of some further
5 fact. You would arrive at this conclusion from circumstan-
6 tial evidence.

7 In other words, a conviction may not rest upon
8 suspicious circumstances alone. However, circumstantial
9 evidence, if believed, is of no less value than direct evi-
10 dence, for in either case you must be convinced beyond a
11 reasonable doubt of the guilt of the defendant you are con-
12 sidering.

13 Now, there are times when different inferences
14 may be drawn from the same facts, whether proved by direct
15 or by circumstantial evidence. The Government asks you to
16 draw one set of inferences. The defendant or defendants
17 ask you to draw another. It is for you and you alone to de-
18 cide what reasonable inferences you choose to draw from the
19 evidence in this case.

20 Indeed, it is your duty to determine the reasonable
21 inferences to be drawn from the facts as you find those
22 facts to be from the evidence, but you may not indulge in
23 guesswork or speculation.

24 There are a number of factors which are not evi-
25 dence in the case and which you may not under any circum-

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stances consider during your deliberations.

First, if during the course of the trial a question was asked and an objection was made and I sustained the objection, you are to disregard the question and any alleged facts contained in the question.

If there was an answer to the question, you are to disregard the answer.

If I ruled that an answer be stricken from the record, you are to disregard the answer and the question in your deliberations. They are not evidence, and therefore they cannot be considered by you in any respect.

You will recall that I told you at the beginning of this trial that an indictment is not evidence. It is a procedure by which persons accused by a grand jury of crime are brought to trial. Whether a person accused is guilty or not guilty of the crimes charged is determined by a trial jury, such as you.

The Government has introduced evidence of the acts and declarations of the defendants and certain alleged co-conspirators who are not on trial here and have not been named as defendants. You may not draw any inference, favorable or unfavorable, for or against the Government or the defendants on trial, from the fact that certain persons are not named as defendants or, having been named, are not on

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trial before you now. They are absent for a variety of reasons. You are not to speculate as to the reasons why certain individuals are not on trial or not named as defendants. These matters are wholly outside your concern and have no bearing upon your functions as jurors.

I should tell you that, as you are well aware, there have been some occasions when we have had to confer outside of your hearing. You are not to speculate as to what was being discussed. Any such conferences were held with the attorneys to avoid having you listen to discussion on questions of law, which concern only counsel and the Court.

The Government has offered evidence concerning a statement given to an assistant United States Attorney by the defendant John Narvaez. The notes of the assistant United States Attorney are in evidence as Government Exhibit 8. The Government asks you to consider whether this statement by Narvaez was false.

The defendant Narvaez contends that this statement is entirely consistent with the other evidence in the case and thus that it was not false.

It is for you, the jury, to decide whether this statement was false or whether it is consistent with the other evidence in the case. If you find that the statement

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was false and that it was given by Narvaez in an attempt to exonerate himself, you may consider the statement as circumstantial evidence from which consciousness of guilt or criminal intent may be inferred.

Whether or not the evidence of the defendant Narvaez's statement points to a consciousness of guilt and the significance if any to be attached to any such evidence are matters for your determination.

Furthermore, while false exculpatory statements made to law enforcement officials are circumstantial evidence of a consciousness of guilt and have independent probative force, falsehoods told by a defendant in the hope of extricating himself from suspicious circumstances are insufficient proof on which to convict where other evidence of guilt is weak and the evidence before you is as hospitable to an interpretation consistent with the defendant's innocence as it is to the Government's theory of guilt. Whether that is the case here is a matter for you to decide.

In any event, I caution you that evidence of any such statements by the defendant Narvaez, should you find them to have been made, is binding only as to the defendant who actually made the statements, and any such statements cannot be considered by you for any purpose as against any other defendant, that is, as to the defendants Colon and

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Vasquez.

There is evidence in this case which the Government asserts constitutes admissions by the defendants. Admissions by a defendant, should you find such to have been made, constitute weighty evidence against a defendant. Accordingly, if you find that any such admissions were made by any defendant, you are entitled to give great weight to such evidence.

Certain of the evidence in this trial was admitted by way of tape recordings of certain alleged conversations. I instruct you that evidence admitted by means of tape recordings is entitled to no greater and no less weight than evidence submitted by any other means.

I repeat: evidence admitted by means of tape recordings is entitled to no greater and no less weight than evidence admitted by any other means.

During the course of the trial, you were given transcripts of certain tape recordings as an aid to your hearing of the evidence on the tapes. The transcripts were admitted into evidence. They may be considered by you as evidence in the case. However, the transcripts were provided to you only to aid you in your hearing of the tapes. Therefore, if the transcripts appeared to you to vary from the tapes in any respect, it is your hearing of the tapes that governs.

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2 You, the jury, must determine as the trier of the
3 facts what was said in the conversations of which tape re-
4 cordings were offered into evidence.

5 The evidence shows that on two occasions when under-
6 cover agents met with certain of the defendants, Detective
7 Bruno was equipped with or used a recording device. In ad-
8 dition, the evidence shows that Detectives Bruno and
9 Caracappa recorded several telephone conversations which they
10 had with certain of the defendants in this case.

11 Just in case you have any doubts on this matter, I
12 instruct you again, as I did earlier, that the use of record-
13 ing devices in the manner described in this case is entirely
14 within the law and violated no one's rights. This is so
15 essentially because the detectives who were participants in
16 the conversations consented to have them recorded.

17 If you find that the defendant Vasquez used a
18 name other than his own name for the purpose of avoiding
19 subsequent identification, that use of a false name would
20 be a fact from which you may or need not necessarily infer
21 a consciousness of guilt on the part of the defendant.

22 You as jurors are the sole judges of the credibility
23 of the witnesses and the weight their testimony deserves.
24 You know that there is no automatic way to decide who is
25 telling the truth and who is not.

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Credibility can be equated with believability. If a witness is credible, you may say that he or she is believable.

You should carefully scrutinize all the testimony given on both direct and cross-examination and otherwise, the circumstances under which each witness has testified and every matter in evidence which tends to show whether a witness is worthy of belief.

You should consider the witness' ability to observe the matters to which he has testified and whether the witness impresses you as having had an accurate recollection of these matters.

A witness may be discredited or impeached by contradictory evidence or by evidence that at other times the witness made statements inconsistent with the witness' present testimony.

If you find that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as it deserves.

If you find that any witness has wilfully testified falsely as to any material matter, you may reject the entire testimony of the witness, or you may accept such portion of it as you believe to be true.

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When judging credibility, consider any relation any witness may bear to any side of the case. Consider the manner in which each witness might be affected by the verdict and the extent to which, if at all, each witness' testimony is either supported or contradicted by other evidence in the case.

In this case, the defendant Juan Vasquez has taken the stand. There is no compulsion or obligation upon a defendant to testify, as I have told you, but when a defendant does take the stand and does testify, he is tested by all the same rules and guides that any other witness is tested by.

You know, of course, that a defendant is interested vitally interested, in the outcome of the case. Interest is a factor that you must take into consideration when assessing the testimony of any witness, whether presented by the Government or the defense.

There has been testimony with respect to the use of persons sometimes referred to as cooperating persons or informants or informers. These services are availed of by Government agents at times as an aid to law enforcement. The law permits the use of informers, provided the rights of a defendant are not violated.

Whether or not you approve of the use of an informant

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ant in an effort to detect law violations is not to enter into your deliberations.

You should also bear in mind that there is no duty upon either side to call a witness whose testimony would merely repeat testimony already in evidence or to offer evidence which would be merely cumulative or evidence already adduced.

Please remember again that a defendant is under no obligation to offer any evidence whatsoever.

The weight of the evidence is not determined simply by the greater number of witnesses or the greater length of time taken by either side. In weighing the testimony of the witness you must consider all of the evidence in the case.

Please remember that a defendant is under no obligation to present any evidence whatsoever.

In regard to all witnesses, the ultimate question for you to decide in passing on the credibility of a witness is: did the witness tell the truth before you? And it is for you to say whether a witness' testimony at this trial was truthful or untruthful, in whole or in part.

Now, this completes the general instructions regarding your duty and function and regarding what you may or may not consider in your deliberations, and I am now

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going to turn to a discussion of the specific charges against the defendants and instruct you as to what essential elements the Government must prove beyond a reasonable doubt in order to sustain the charges against the defendants.

The indictment in this case contains five counts. Each count charges a separate violation of the Federal laws.

In the first count, each of the three defendants on trial before you is charged with conspiring to distribute and to possess with intent to distribute a narcotic drug controlled substance.

In Counts 2, 3, 4 and 5 before you, the defendant Juan Ramon Vasquez only is charged with committing what we call substantive violations of the Federal law which makes it unlawful to possess a narcotic drug controlled substance with the intent to distribute it.

Now, each count charges a separate crime. Each count must be considered by you separately, and with reference to each count in determining whether the defendant you are considering is guilty or not guilty you are to consider only evidence presented against that defendant.

We will first discuss Count 1, the conspiracy count, and then move on to the remaining counts, which we call substantive counts, in which only the defendant Vasquez is charged.

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The indictment charges that the defendants conspired along with certain alleged co-conspirators to distribute and to possess with intent to distribute a controlled substance which allegedly was heroin.

Let me read the first two paragraphs of the indictment. I am going to furnish a copy of the indictment for you upon your commencing your deliberations, so I am not going to read the entire indictment, but pay attention to this.

The Grand Jury charges:

1. From on or about the 1st day of October 1976 and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York, which filing date was March 22, 1977, Juan Ramon Vasquez, also known as Ramon Ramos, Luis Angel Reyes, Aurea Vasquez, also known as Gloria Montalvo, Pedro Lugo, Enruqueta Colon, also known as Catina, Gabriel Urbina-Astorga, Jose A. Agosto-Concepcion, also known as Indio, and John Narvaez, the defendants and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections -- and here certain Federal statutes are listed.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would

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2 distribute and possess with intent to distribute Schedule I
3 narcotic drug controlled substances the exact amount thereof
4 being to the Grand Jury unknown, in violation of -- then
5 there are named certain Federal statutes.

6 You can read that part of the indictment and the
7 rest of it yourselves.

8 Thus, each of the defendants is charged with con-
9 spiring to violate what we call Title 21 of the United States
10 Code, Section 812, which lists heroin as a Schedule I drug
11 controlled substance, and Section 841(a)(1), which makes it
12 unlawful for any person to knowingly and intentionally
13 distribute heroin or to possess heroin with the intent to
14 distribute it.

15 Now, before you may convict any one of the defend-
16 ants under this conspirach charge, you must first find that
17 the Government has proved beyond a reasonable doubt the
18 following three elements of the crime charged: the crime of
19 conspiracy.

20 First, that a single, overall conspiracy, as charged
21 in the indictment, existed.

22 Second, that the defendant you are considering was
23 a wilful, knowing memeber of the conspiracy and

24 Third, that at least one of the overt acts alleged
25 in the indictment was committed in the Southern District of

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New York by a member of the conspiracy.

Now, I am going to take each one of those elements and explain each one.

As to the first element, the existence of the conspiracy charged in the indictment:

A conspiracy is defined as an agreement between two or more persons to accomplish some unlawful purpose. It is sometimes referred to loosely as a partnership in crime. The gist of the crime is the agreement itself to violate the law.

Whether or not the alleged conspirators every accomplished what it is alleged they conspired to do is immaterial to the question of whether they are guilty or not guilty of the crime of conspiracy.

It is not necessary in order to establish the existence of a conspiracy that there be evidence that the persons involved entered into a formal agreement. It is sufficient if two or more persons, in any manner, through any means, came to a common understanding to accomplish certain unlawful goals.

It is not required that you find that all of those alleged to be co-conspirators joined in the conspiracy in order for you to find that the conspiracy existed. In this case, in order to find that the conspiracy charged existed,

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you must be satisfied that some time between October 1, 1976 and March 22, 1977 an agreement existed between any person named in the indictment and any other person alleged by the Government to be a co-conspirator.

You must, further, be satisfied that it was part of the agreement to accomplish the aims set forth in the conspiracy charged, that is, to distribute or to possess with the intent to distribute a narcotic controlled substance, to wit, heroin.

In this case, you must find that the Government has proven beyond a reasonable doubt that the defendant you are considering conspired with somebody else to possess and to distribute the drug controlled substance known as heroin.

There has been a stipulation that if called, certain Government chemists would have testified that they tested the samples given, to wit, Government Exhibits 1 through 6 in evidence, and found them to be heroin.

Let me read that again.

There has been a stipulation that if called, certain Government chemists would have testified that they tested the samples given to them, to wit, Government Exhibits 1 through 6 in evidence, and that they found them to be heroin.

I instruct you that as a matter of law heroin is

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a Schedule I controlled substance, as defined by the statute under which the defendants are charged. However, in order to convict any of the defendants you must still find beyond a reasonable doubt that the substance the defendants allegedly conspired to possess and distribute, which are Government Exhibits in evidence 1, 2, 3, 4, 5 and 6, was in fact heroin.

Now, it is not necessary for the Government to prove that the conspiracy existed throughout the entire period alleged in the indictment. It is sufficient if the Government proves that during that period of time a conspiracy arose and existed between the defendant you are considering and a co-conspirator.

A conspiracy once formed is presumed to have continued until its objectives are accomplished or until there is an affirmative act of termination by its members or until it is otherwise terminated, as, for example, by arrest.

So, too, once a person is found to be a member of a conspiracy, that person is presumed to continue his or her membership until its termination unless there is affirmative proof of withdrawal of disassociation.

In determining whether an unlawful conspiracy existed, you are to consider the evidence as to the acts and conduct of each of the persons the Government alleges were co-conspirators. If the proof convinces you beyond a reason-

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able doubt that the minds of at least two persons met so as to bring about a deliberate agreement to do the acts which are set forth in the indictment as the aim of the agreement, that is sufficient proof of the existence of a conspiracy, and this would satisfy the first element of the crime charged.

If you are satisfied that a conspiracy to distribute narcotics, as described in the indictment, existed, you must then consider the evidence relating to each defendant on trial here separately to determine whether that evidence proves that the defendant you are considering was a member of the conspiracy.

The second element the Government must prove is that the defendant you are considering was a knowing and wilful member of the conspiracy or party to the conspiracy.

Knowledge exists in the mind. Obviously, it is not possible to look into a person's mind for the purpose of seeing what went on. So the only way you have for arriving at a decision on this question is for you to take into consideration all of the facts and circumstances shown by the evidence and to determine from all such facts and circumstances whether the requisite knowledge was present at the time in question.

Direct proof of knowledge is not necessary. Knowledge may be inferred from all the surrounding circum-

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stances.

An act is said to be done knowingly if it is done voluntarily and purposefully and not because of a mistake or accident, mere negligence or for some other innocent reason.

An act is done wilfully if it is done knowingly and deliberately, with the purpose of disobeying or disregarding the law.

In this case, you must be satisfied beyond a reasonable doubt that the defendant you are considering did wilfully and knowingly join the conspiracy, aware of its lawful aims.

It is not necessary that a person be fully informed as to the details of the scope of the conspiracy charged. On the other hand, the mere fact that a defendant may be present at certain meetings or that a defendant may be present when certain acts are done in furtherance of the conspiracy or that a defendant may be seen with one of the co-conspirators does not constitute enough to make that defendant a conspirator. Nor is knowledge of the conspiracy without agreement to participate enough. Before you can find that a defendant in this case was a member of the conspiracy charged you must first find that the defendant you are considering knowingly and wilfully joined the conspiracy charged.

Thus, even if you find that a conspiracy existed

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and that the defendant you are considering unwittingly aided the conspiracy, unaware of its unlawful object through, for example, a casual favor for a friend, that is insufficient to conclude that a defendant was a wilful member of the conspiracy charged.

Accordingly, you must look to the person acts and statements of each defendant to determine whether such evidence establishes that the defendant you are considering joined the conspiracy knowingly and wilfully.

The Government must prove more than mere knowledge or negative acquiescence in the criminal conduct of others. Mere willing participation in the acts with alleged co-conspirators, even with general knowledge that their intent was to violate the law is insufficient to establish membership in the conspiracy. There must be something more.

In order for the Government to prove that any of the defendants was a member of the conspiracy, it must prove that the defendant, with specific criminal intent, in some sense sought to promote the venture, to make it his own or her own or that the defendant had a stake in the outcome.

In deciding this question, you must look to the words and deeds of the defendant you are considering as well as to all the surrounding circumstances in order to determine whether the defendant knowingly and wilfully became a member

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of the unlawful venture.

You must bear in mind that a defendant's participation in the alleged conspiracy can be established only by proof of that defendant's words and deeds.

When two or more persons enter into a conspiracy they become agents for one another in carrying out that conspiracy. If you find that a conspiracy existed and that a particular defendant was a knowing and wilful member of the conspiracy or that a particular person was a knowing and wilful member of that conspiracy, then that person's acts and declarations which are performed during the duration of the conspiracy and in furtherance of its aims are binding upon any other person whom you find was also a wilful member of the same conspiracy, just as though that person had performed the acts and made the declarations himself or herself, and this is so even if the person did not know about the acts or statements of the other person and was not there when such acts or statements were done or made.

The guilt of a conspirator is not governed by the extent or duration of the conspirator's participation or by whether he or she had knowledge of all of its operations. Even if one joined the conspiracy after it was formed and was engaged in it to a degree more limited than others, that person is equally culpable so long as he or she was a co-

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2 conspirator.

3 It is not required that all of the co-conspirators
4 know each other or even that they had associated with each
5 other before. A defendant may know only one other member of
6 the conspiracy, but if the defendant knowingly and wilfully
7 enters into an unlawful agreement with that member of the
8 conspiracy, then the defendant becomes a party to the entire
9 unlawful venture charged here.

10 Thus, if you find that the defendant you are con-
11 sidering was a member of the conspiracy, then however limited
12 that defendant's role may have been in furtherance of the
13 unlawful aims of the conspiracy, the defendant is responsible
14 for all that was done in furtherance of the conspiracy by
15 any other member of the conspiracy.

16 It is important to note that this principle
17 applies only to the acts and declarations done or made during
18 the period of the conspiracy and in furtherance thereof,
19 that is, to carry out an unlawful objective or purpose of
20 the conspiracy.

21 The third and last element of the charge of con-
22 spiracy is what is called the overt act element. An overt
23 act need not in itself be a criminal act. It is one of the
24 elements of the conspiracy charge, because it demonstrates,
25 where found to exist, that the conspirators have gone beyond

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the stage of merely thinking about an illegal goal. It can be any act, such as, for example, a meeting, as long as it is an act performed in furtherance of the conspiracy.

The Government need not prove that all of the overt acts alleged in the indictment were performed or that the overt acts were performed at the precise time or place alleged in the indictment. It is sufficient if it proves that one of the acts alleged was performed by somebody you find to have been a member of the conspiracy charged and that such an act occurred in the Southern District of New York -- and that would include Manhattan and the Bronx -- and that such act was done in furtherance of the conspiracy and that it occurred during the period of the conspiracy as charged.

The overt acts are set forth in the indictment. I am not going to read them. You can read them yourselves from the indictment, which will be sent into the jury room.

If you determine that the conspiracy as charged existed, it is not necessary for you to consider whether the defendant you are considering committed or participated in an overt act, since, as I told you a moment ago, the acts of any member of the conspiracy done in furtherance of the conspiracy become the acts of all other members of the conspiracy.

I instruct you as a matter of law that the Borough

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of Manhattan is in New York City and is in the Southern District of New York, where the Government alleges certain of these acts occurred. However, you must still find that one of the overt acts occurred and that it occurred in the Southern District of New York.

To conclude the conspiracy charge, if upon all the evidence that you believe and consider relevant you are satisfied that the Government has proved beyond a reasonable doubt each of the three elements of the crime of conspiracy as to the defendant you are considering, then you will return a verdict of guilty as to that defendant. If you are not so satisfied, you will return a verdict of not guilty as to that defendant.

The three elements, once again, are:

That a single, overall conspiracy, as charged in the indictment existed;

That the defendant you are considering was a wilful, knowing member of the conspiracy, and

That at least one of the overt acts alleged in the indictment was committed in the Southern District of New York by a member of the conspiracy, in furtherance of the aims of the conspiracy.

Now, I have the substantive counts to give you next. I would suggest you stand for a few minutes and let

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the blood circulate a little bit.

(Pause.)

THE COURT: In Counts 2, 3, 4 and 5 of the indictment, the grand jury charges that the defendant Juan Ramon Vasquez, together with another defendant, not on trial before you, Luis Angel Reyes, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, heroin.

Each of the second through fifth counts charges a separate crime, and each count must be considered by you separately.

Counts 2 through 5 are set forth in the indictment. Each count charges the possession of heroin with intent to distribute, and each count charges that the alleged crime took place in the Southern District of New York. You can read the particulars for yourselves.

I instruct you with respect to these counts, as I did with respect to Count 1, that as a matter of law heroin is a Schedule I narcotic drug controlled substance and also that Manhattan is within the Southern District of New York.

Before you may find the defendant Juan Ramon Vasquez guilty of any of the substantive crimes charged in Counts 2 through 5, you must find that the Government has

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established each of the following elements as to the count you are considering. There are three:

First, that on or about the date charged, the defendant possessed a narcotic drug controlled substance with intent to distribute it.

Second, that the defendant did so unlawfully, intentionally and knowingly, and

Third, that the substance in the Government's exhibits in question is in fact heroin.

Now, you will note that the first element of the offense charges "possessed with intent to distribute" the drug. The word "possessed" is used in its everyday, ordinary sense. To possess something is to exercise dominion and control over something; but there can be two types of possession. There is actual possession, where an individual has a personal, manual or physical control over something, and there is what we call constructive possession, where a person has the power to control a thing, although it is not in the actual physical possession of somebody else.

Thus, a person who is sufficiently associated with the person who has physical custody of the thing so that he is able without difficulty to cause in this case the drug to be produced for a customer, say, can be said to have dominion and control over the drug and therefore to have

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possession of it.

On the other hand, the mere presence of the defendant at the scene where the drug is possessed by another, even where the defendant knew that the other person had possession of the drug and even where the defendant casually facilitates the sale of the drug, is insufficient to establish possession by the defendant.

In order for you to find that the defendant Vasquez had possession of the drug under such circumstances, the Government must prove that the defendant Vasquez had a working relationship with the other person, such as would enable the defendant to assure delivery of the drug.

Unless you so find, the defendant cannot be found to have had dominion and control over the drug and cannot be said to have been in possession of it.

The law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If you find that the defendant Vasquez, either alone or jointly with others, had actual or constructive possession of the heroin described in the indictment, then you may find that such heroin was in the possession of the accused within the meaning of the word "possession", as used in these instructions.

If you find that the defendant possessed the heroin

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before the first element is satisfied you must also find that the defendant possessed the drug with the intent or purpose to distribute it, that is, to transfer it, to deliver it, to pass it on rather than to use it for himself.

The word "intent" refers to a person's state of mind. Ordinarily, intent cannot be demonstrated directly, since the thought processes are not subject to direct proof. You may, however, infer a defendant's knowledge and intent from the facts and circumstances surrounding a defendant's act or acts.

To sum up the first element, the Government must establish that the defendant did exercise dominion and control over the heroin with a deliberate plan to pass it on or to deliver it.

The second element which the Government must prove to convict the defendant Vasquez of any of the substantive counts of the indictment is that the defendant unlawfully, intentionally and knowingly possessed the heroin with the intent to distribute it.

"Unlawfully", of course, means contrary to law. It is not necessary that the defendant knew that he was violating any particular statute; it is enough if you are convinced that he was aware of the unlawful nature of his act.

An act is done intentionally if it is done wilfully

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and deliberately. An act is done knowingly if it is done voluntarily and purposefully. Thus, before you can find the second element satisfied, the Government must prove that the defendant Vasquez knew what he was doing and that he did it deliberately and voluntarily and with the awareness that the substance in question was heroin and that he was breaking the law and not because of a mistake or accident or some other inadvertent or innocent reason.

As to the third element, you must be satisfied that the substance which was possessed in each of the four substantive counts in question was in fact heroin. In this case, the parties have each stipulated that if certain Government chemists were called they would testify that the substances found in government Exhibits in evidence 1, 2, 3 and 4 are heroin.

However, this is an element of the crimes charged, and hence you must find that the substances in question were in fact heroin.

To sum it up, before you may find the defendant Juan Ramon Vasquez guilty of any of the crimes charged in any of Counts 1, 2, 3, 4 and 5, you must first find that the Government has proved beyond a reasonable doubt each of the elements I have just explained to you. If you so find, it is your duty to convict on the count you are considering.

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2 If not, it is your duty to acquit.

3 Now, aiding and abetting:

4 The Government also charges that the defendant
5 Juan Ramon Vasquez aided and abetted another defendant,
6 Luis Reyes, in the commission of the crimes set forth in
7 Counts 2, 3, 4 and 5. The applicable Federal statute pro-
8 vides as follows:

9 "Whoever commits an offense against the United
10 States or aids or abets its commission is punishable
11 as a principal."

12 Accordingly, it is not necessary for the Government
13 to show that the defendant Vasquez himself physically com-
14 mitted the crimes charged in order for you to find him
15 guilty. The law provides that a person who aids or abets
16 another in the commission of a crime is just as guilty of
17 that offense as if he committed it himself.

18 Therefore, you may find the defendant Juan Ramon
19 Vasquez guilty of the offenses charged in Counts 2, 3, 4
20 and 5 if you find beyond a reasonable doubt that the Govern-
21 ment has proved that another person actually committed the
22 crime with which the defendant is charged and that the defend-
23 ant aided or abetted him in the commission of that offense.

24 In order to aid or abet another to commit a crime,
25 it is necessary that the accused person wilfully and knowingly

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associated himself in some way with the crime charged and that he wilfully and knowingly sought by some act to help the crime succeed.

I have already explained to you the meaning of "wilfully and knowingly".

I instruct you that the mere presence of a defendant at the scene where a crime is being committed or mere knowledge by a defendant that a crime is being committed or the mere negative acquiescence by a defendant in the criminal conduct of others, even with guilty knowledge, is not sufficient to establish aiding and abetting. An aider and abetter must have some interest in the venture.

Now, to determine whether the defendant Juan Ramon Vasquez aided and abetted another in the commission of the offenses with which he was charged in Counts 2 through 5, ask yourselves these questions:

Did he participate in it as something he wished to bring about?

Did he associate himself with the venture charged, knowingly and wilfully?

Did he by his action seek to make the venture succeed?

If he did, then he is an aider and abetter and therefore guilty of the crime you have found to have been

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committed.

However, I instruct you that you may not find a defendant guilty of aiding and abetting unless you have found that every element of the possession of heroin with intent to distribute, as defined by me in these instructions earlier, was committed by some person or persons and that the defendant knowingly and wilfully participated in its commission.

Now, entrapment:

The defendant Juan Ramon Vasquez asserts as to these charges that he was the victim of entrapment by undercover agents representing the Government. The word "entrapment" that I have just used is a legal term. It has a technical meaning, not that of popular speech or colloquial useage. Therefore, I must explain the meaning of the word "entrapment as it is used in the law.

Criminal activity is such that sometimes undercover strategies are necessary methods to be used by law enforcement officers. The function of law enforcement is not only the prevention of crime but also the detection and apprehension of criminals. Manifestly, that function does not include the manufacturing of crime.

The defense of entrapment is based upon the policy of the law not to ensnare or entrap innocent persons into the

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commission of a crime, but a line must be drawn between the entrapment of the unwary innocent and the setting of traps for the unwary criminal.

A basic feature of entrapment is that the idea or design of committing the crimes charged originated with a law enforcement officer rather than with a defendant, that the defendant had no previous disposition, readiness, intent or purpose to commit the crimes charged and that the law enforcement officer or Government employee implanted in the mind of an innocent person the disposition to commit the crime charged and instigated and incited that commission in order that a defendant might be arrested and prosecuted.

I instruct you that before you can consider the defense of entrapment, you must first find that each of the elements of the crime you are considering has been satisfied beyond a reasonable doubt. In other words, before you consider whether Juan Ramon Vasquez was entrapped into committing a crime, you must first determine that a crime was in fact committed.

If you find that a crime was committed, you must then consider the entrapment defense. In determining whether entrapment occurred, if you find that an agent or employee of the Government merely afforded to the defendant Vasquez a favorable opportunity or facility for the commission of the

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2 crime charged, such conduct on the part of the Government
3 does not in itself constitute entrapment. Entrapment would
4 occur only if you find that the Government agents initiated
5 the crimes charged in the indictment and that the criminal
6 conduct of the defendant Vasquez was the product of the
7 Government's activities.

8 If you do so find, I instruct you that the Govern-
9 ment is responsible for the conduct of the agents, and it
10 may not seek to disavow such conduct. If you find any cred-
11 ible evidence creating the reasonable possibility that the
12 Government instigated or otherwise induced the defendant Juan
13 Vasquez to commit any of the crimes charged in this case,
14 then the Government must prove beyond a reasonable doubt
15 that such inducement was not the cause of the crime, that is,
16 the Government must prove that the defendant had been pre-
17 disposed and willing to commit the crime.

18 If the Government has satisfied you beyond a reason-
19 able doubt that the defendant Juan Ramon Vasquez was ready
20 and willing to commit the offense and was awaiting a favorable
21 opportunity to commit the offense, then you may find that
22 such inducement which brought about the offense was no more
23 than the providing to the defendant of a timely or convenient
24 opportunity to commit the offense.

25 In such circumstances you may find that the

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2 Government has not seduced an innocent person but has only
3 provided the means for that person to effectuate or realize
4 his own then existing purpose, and if you so find, then you
5 must convict, providing, as I have instructed you, that you
6 have found each of the essential elements of the crime charged
7 proved beyond a reasonable doubt.

8 It is important that you understand that the de-
9 fendant is not required to prove his entrapment. On the
10 contrary, if you find some evidence that the Government
11 initiated the crime charged, then the Government is obliged
12 to prove beyond a reasonable doubt that the defendant was
13 not entrapped.

14 If you find that the Government has not met this
15 burden, then you must acquit, even if you find that each of
16 the elements of the crime has been proved.

17 Finally, you should bear in mind that the defendant
18 Juan Ramon Vasquez asserts the defense of entrapment with
19 respect to each of the five offenses with which he is charged.
20 Since each offense charged is separate, you should consider
21 the entrapment defense separately with respect to each count.

22 Now, I have described the charges contained in the
23 first count of the indictment against the defendants Vasquez,
24 Colon and Narvaez and the four substantive counts in the in-
25 dictment against the defendant Vasquez, and I have outlined

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the essential elements of those charges.

Again, you should note that a separate crime or offense is charged in each of the five counts. Each charge against a defendant and the evidence pertaining to it should be considered separately. The fact that you find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to the other offenses charged against the same defendant. Likewise, the fact that you find one defendant guilty or not guilty as to any particular charge should not control your verdict as to the other defendants.

Also, you are not to consider in any way or speculate about any sentence which a defendant may receive if found guilty. It is the function of the jury to deliberate and determine whether or not the defendant is guilty or not guilty or the offenses charged in the indictment, and it is the Judge's function to dispose of the case thereafter.

The most important part of this case is that which you as jurors are about to perform, because it is you who will have to decide whether the defendants or any of them are guilty or not guilty of the crimes charged. I know that you will try the issues that have been presented to you according to the oath which you took as jurors, and in that oath you will recall that you promised that you would well and truly

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try the issues joined in this case and a true verdict render. If you follow that oath and if you try the issues without confusing your thinking with emotion you will arrive at a just verdict.

As you deliberate, please be careful to listen to the opinions of other jurors as well as to ask for an opportunity to express your own views. No one juror holds the center of the stage in the jury room, and no one juror controls or monopolizes the deliberations. You must all express your views, and if you become convinced that your original view was wrong with respect to any matter, do not be afraid to change your vote because of pride in your original opinion or the stubbornness of another person.

However, do not surrender your honest belief simply because you are outnumbered.

You understand that in a criminal case in this court your verdict as to each count must be unanimous, that is, it must be joined in by each and every one of you.

The form of the verdict will be as to each defendant guilty or not guilty as to the counts in the indictment in which each defendant is charged.

During your deliberations, you may send for any exhibits that you may wish to review, and you may request that any of the testimony be read back to you. You may also

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request that any portion of this charge be read to you.

We will send a copy of the indictment in to you, and you must remember that it is an accusation. It is no proof of anything.

All communications to the Court must be in writing, signed by the foreman. Further, you must not reveal at any time the standing of the jurors as to any defendant or as to any count of the indictment during your deliberations; that is, you are not to reveal the split as to any defendant as to any count -- not to anyone, including the Court.

At any time that you have arrived at a verdict with respect to any defendant, you may send out a note with respect to that defendant, and we will take that verdict, whatever it is.

That is the end of the instructions.

Will you please step into the jury room for a few minutes, but do not begin your deliberations yet. I must speak with the attorneys for a brief moment, and then we will call you back into the courtroom.

(The jury left the courtroom.)

THE COURT: All right. I will take exceptions.

Mr. McNamara?

MR. McNAMARA: The Government has no exceptions, your Honor.

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2 THE COURT: Do you have any exceptions, Mr. Marks?

3 MR. MARKS: No exceptions, your Honor.

4 THE COURT: Mr. Zap?

5 MR. ZAP: Yes, your Honor.

6 I would except to that portion of the instruction
7 regarding circumstantial evidence which by implication would
8 allow the jury to resolve any dispute or reasonable inference
9 in favor of the Government. To put it more clearly, if a
10 piece of circumstantial evidence admits of two reasonable
11 inferences, one for the Government's position and one against
12 it, then your instruction would allow the jury to resolve
13 that particular dispute in favor of the Government.

14 I request that your Honor instruct the jury that
15 if there is such a dispute in that kind of a situation, it
16 should be resolved in favor of the defendant.

17 THE COURT: Your request is denied. Your statement
18 of the law in this Circuit is incorrect. I think it was you,
19 Mr. Zap -- although I am not sure -- who alluded to that in
20 your summation. There was no interruption at that time.

21 The law in this Circuit rejects the doctrine that
22 where the Government's evidence is circumstantial it must be
23 such as to exclude every reasonable hypothesis other than
24 guilt. It also rejects the view that an inference may not
25 properly be relied upon in support of an essential allegation

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GX 10A

DET. CARA: John, They got white there too!

DET. BRUNO: Over there?

RAY: Yeah!

PETE: Yeah, we goin get a sample when we get that package. Already I, you know.

DET. BRUNO: Very good!

PETE: Give us a sample otherwise we, no.. no business

DET. BRUNO: Yeah, you know why, because you know, the other stuff, is good but its hard to work with, very hard to work with.

RAY: He told me, eh, the white you could cut it two or three times.

PETE: See that's what we want to find out first, get the sample, then you can do whatever you want to do with it, you know, then you find out for yourself. You know.

DET. CARA: We'll buy it you know we don't want nothing for nothing.

PETE: Oh no, 'cause, see eh, because if you going to buy a piece, 'cause thats the way they are, you know they give you a sample, you know

DET. BRUNO: Uh huh.

PETE: Because they,... you know, they know you not (inaudible)

DET. BRUNO: And what kind of price they want on the other thing.

DET. CARA: The same price she says.

PETE: We have to find out you know, if its the - same price.

GX 10B

DET. BRUNO: Pete, everything is ready?

RAY: Yes everything is ready

PETE: We're all set up for tomorrow.

DET. BRUNO: Er, well we told you, you know, you have to give us one day to get everything together, 'cause tonight after we get finished, we got a long ride, we want to go to Philly, get everything prepared.

BM:jm
-1978

PETE: That's why we goin' get it together for Thursday then.

DET. BRUNO: Very good. Thursday morning early.

PETE: Right, right that's, (inaudible) reminds me,.....

DET. CARA: Explain to him the situation with er,....

DET. BRUNO: Oh yeah, listen, the price is set,

RAY: Right.

DET. BRUNO: 28'

RAY: Right

DET. BRUNO: right, we'd like to have four right

DET. CARA: Inaudible

PETE: Ok.

DET. BRUNO: Now I'm goin' to tell you why, 'cause I somebody else that we spoke to last night, he wants to come in. I gave him a price of 40. Eh, so without even touching it, like, like this like that, and I make myself 12 thousand dollars.

DET. C: Ramon, how does, eh, how does Senora want it with the tickets. You want us to buy the tickets, or you gonna buy the tickets, how how are we gonna work this out? Or you want to talk when we get in the restaurant.

RAY: When we get in the restaurant whatever she want to do, yeah, you know. I let her make her own decision.

PETE: It's better you buy all of them.

DET. C: That's what I say. I buy all the tickets.

RAY: Right!

DET. C: Then I'll buy all the tickets.

RAY: Right!

DET. C: You know, I get all the tickets and we all go together, we go, eh, ...

RAY: Right!

DET. C: Thursday morning, we all go together.

DET. B: I mean, it's all arranged over there in Chicago. They know to expect us.

MEM:jm
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PETE: They expect us tomorrow, they suppose to expect us in the afternoon.

DET. B: Oh alright, you could, you could call them and you tell them that it'll be Thursday. Because Thursday we could leave early, we come back right away.

DET. C: We come back right away.

DET. B: The thing is now, we have to find out how the weather is and, you know, when we drive because, you know. . .

DET. C: If the weather's bad we fly back. How much could it be.

DET. B: Yeah, but I'm a little scared you know, you gotta talk about. . .

DET. C: Why?

DET. B: eh, eh, you know, eh . . .

PETE: Drive back, it's even better.

DET. C: Look, it makes no difference to me.

RAY: . . . so we goin' on a train.

DET. B: That's even better.

PETE: Yes, yes.

DET. B: How long, how long can it take with the train?

PETE: Oh, not long, a couple of hours that all.

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MBM:jm
3-1978

RAY: And the train is better.

DET. B: That's what we do. Yeah.

PETE: To be on the train, it be two or three hours, you know, and that's fine, because by car it's even, it takes longer. Then the weather hold you up.

DET. B: Alright that's good.

PETE: We might as well take the train. That's the best idea I heard.

DET. C: Naw, Ramon.

RAY: Um.

DET. C: The stuff is going to delivered to us?

PETE: Yes.

RAY: Yes. We be there in the hotel.

PETE: All we have to do is when we get there she has to make a telephone call . . .

RAY: And the guy bring . . .

PETE: And the guy brings it right away.

DET. C: OK. The money stays with us all the time.

PETE: That's true.

RAY: Right. That's true.

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PETE: No problem.

DET. B: But more than all this, "The quality".

PETE: Well that's what I'm here for, I'll be looking out for that 'cause I see a lot of dope around you know. . .

DET. C: Let me tell you something. . .

DET. B: That's goin be important, the quality.

DET. C: Right now, since we're goin' for the four. And there's no problem and we get out of there, make it worth your while and we make it worth the lady's while, you know what I mean, 'cause we're not cheap people, 'cause we're goin' for the four, he's making 12 on the four, you know what I mean, we figure, hey, we rook this guy for forty, what the hell, you know what I mean. It's worth it to us to bring that much more money out. But we goin' fly the money out without us. The money's going out without us, when we get to the airport, the money will be there waiting for us.

RAY: Right!

DET. C: With that

PETE: That we need

RAY: That we need

PETE: We all gotta have one.

DET. C: But we gonna send that out ahead.

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PETE: Good enough.

DET. C: Alright.

PETE: Good enough, that sounds good.

RAY: Sounds good.

DET. C: So when we get to the Airport, my cousin Sally is goin' to be there, in other words, tomorrow morning we gonna go, we gonna check the money, and you know my word on money, because I ain't gonna buy five tickets and go out there and there ain't gonna be no money.

RAY: Right.

DET. C: And the bread, that's all, OK Then the hotel, eh, what hotel, eh, does she know that hotel?

PETE: She knows where to go . . .

DET. C: She knows the place?

DET. B: Ah, alright.

DET. C: To get the rooms.

DET. B: Ah, its a nice place, though?

PETE: Yeah, it's a nice place. We don't go out there, you know. . .

-A25-

73A

6X 18

M:ds
1978

RAY: No, we go to high class place.

DET. B: Ramon, everything is gonna be like business.
You know like in Wall Street.

RAY: Yeah.

DET. B: I like to conduct business that way. Very, very
business like. It gotta be!

PETE: It's the best way to do it.

DET. B: Well sure, because you know, over here you . . .
huh, well, good luck anyhow.

DET. C: No, no, no, no Ramon if I didn't trust you, I
wouldn't be takin' to like this. Believe me I
wouldn't be takin' to you like this. We're talkin'
over a hundred thousand dollars. There's goin
be three of us, and you, eh, ped. . . Dino-
comin' or no

DET. C: They take you life, they take mine. Don't worry
about it.

RAY: No.

DET. C: There's going be us. That's all its goin' be.
You know those people over there for a hundred
thousand dollars, they'll bury us all.

RAY: Yeah. I know, I know.

-A26-

74A

BM:ds
-1978

DET. C: That's why we have to be very very careful.
When we see the merchandise, they got the bread.
No problems, no problems. Once we look at it
gonna test it, we gotta look, . . . naturally
we gotta look at it.

RAY: Yea, yeah.

DET. C: You understand what I mean? I want to cook a
little bit, I want to see how it cooks up.
You know what I mean. I don't want him to say
give me, say cook this. I'll pick out a package
we'll open it up and we cook it ourselves.

PETE: That's the way it is. That's the way it's gonna be.

B Eh, the thing is, we don't want to go over there and waste time. In other words, we want to go there, do our business, and...fast, and you know and go away. Cause, you know, its a lot of money and, you know, so, so, what we want to do, is to go there, do what we gotta do and go' Now depending on how the weather is, we might drive back.

Aurea ...(inaudible),...by plane,...it's better.

B By bus or train, its better, this way we don't have to worry about driving, cause the weather is going to bad, you know...

C The train...

Aurea The train...

B How long does it take by train?

Aurea 24 hours.

MBM:jm
77-0573
03-2047

-5-

B Aw, that's a long time. And what about the bus?

Aurea inaudible

B May be we take the bus.

C It don't make no difference to me as long . . . inaudible

Pete Excuse me. How long does it take to get to...
by train?

Aurea 24 hours.

Pete 24 hours. Are you sure?

Aurea Yes.

Pete And it takes six hours by bus?

Aurea inaudible

B Well thats not bad. I don't even know your name.
Aurea?

Aurea Aurea.

B Loria?

Aurea Gloria.

B Oh, Gloria.

Aurea Right...

B They say Aurea. Its a funny name.

Aurea -

B Gloria, the thing is we're interested in the quality
of the product. We figure we're paying a good price
the, money is secure, there's no problem with the
money.

Aurea Yes

B Tomorrow afternoon the money is going to be in Chicago.
See, Thursday, we get there, we go to the hotel
a nice hotel. I hope it's a nice hotel?

MBM:jm
77-0573
03-2047
-6-

C You tell me what hotel, you tell me... you
 want to work that out, you let me know.

Aurea Right

C ...My man is goin meet me at the airport with... inaudible

Aurea Right.

C Cause we don't travel without... inaudible

Aurea Right.

C No reflection on you but its a lot of money.

Aurea Yes, I know.

BM:ow
-1930

6X 19
Ex. D. C.T. 76-0259
February 2, 1977

DET. B: Today is February 2, 1977, I am Det. John Bruno, shield # 3264. The time is 5:45 p.m. eastern standard time. I'm about to place a telephone call to 212-677-6694 and have a conversation with Gloria Montalvo relative to the purchase of a quantity of heroin in Chicago, Ill. case # C.T. 76-0259.

Unkn.
Female: Hello

Det. B: Hello Gloria.

Unkp.
Female: Hello.

DET. B: Hello, Gloria please.

Unkn.
Female: Gloria.

DET. B: Yea,

Unkn.
Female: Whose speaking?

DET. B: John.

Unkn.
Female: John?

DET. B: Yea.

Unkn.
Female: Hold on.

RAMON: Que paso?

DET. B: Hello.

3-1930

RAMON: John.

DET. B: Yeah this is John.

RAMON: Yeah.

DET. B: Is Gloria there?

RAMON: Huh?

DET. B: Gloria

RAMON: It's me Ramon.

DET. B: Oh what the hell happened, Dam these who died
you know what you doing to us over here?

RAMON: No, listen.

DET. B: What happened?

RAMON: I was coming down here, huh, what it was they talk to
her you know and told her wait, we have to wait, he
going to call tonight.

DET. B: He's going to call tonight.

RAMON: Yea.

DET. B: Do you think this thing is oing to get done tomorrow,
you know I got the

RAMON: I know, I know, because huh.

DET. B: I got people over there.

RAMON: I know, but, something happened you know. A problem - inaudible - the thing was frozen. I know what it is.

DET. B: What do you mean by frozen? I don't understand. You mean because of the weather?

RAMON: Yea . . .

DET. B: You mean the weather is bad over there? Or what?

RAMON: Bad overthere, the thing it was no good, you know.

DET. B: You mean the - quality?

RAMON: Yea.

DET. B: Huh -----

RAMON: He called up, huh, and say wait a couple of days. But he going to call tonight.

DET. B: Yea.

RAMON: And see if we are leaving tomorrow.

DET. B: Alright, look, because, huh, we made arrangements and everything I got, huh, I got, huh.

RAMON: Yea. I know. I know.

DET. B: I got the airline booked. I got anything my people are over there.

RAMON: Yea, but they have to wait, they going to call to her tonight to see if we make it tomorrow. But you know that's what happened.

DET. B: But let me ask you this - -

RAMON: Yea.

DET. B: How bad is the product?

RAMON: I don't know.

DET. B: You see the thing is if the price can move a little bit, maybe we still can do something.

RAMON: It's no good, period.

DET. B: - - - it's no good period.

RAMON: Yea.

DET. B: But then it's no good for us if it's that bad.

RAMON: Right, that's what happened.

DET. B: Huh. Boy of boy! You know --

RAMON: Well you see these people don't cut that one you know - inaudible - They call up and say it's no good.

RAMON: You know these people don't take no chance because. . .

DET. B: Well, yea. Because I feel the same way because we're talking a lot of money here.

RAMON: Yea.

3-1930

DET. B: You know what I mean.

RAMON: But then I don't want you, you know. I don't want these people to think we're fooling either; you know?

DET. B: Oh no, naturally - Listen, I appreciate. I really appreciate, look, that you feel this way. It's good, you know.

RAMON: Right.

DET. B: Oh boy, Oh boy, listen is Gloria there?

RAMON: What? Yea.

DET. B: Alright, let me speak to her for a second.

RAMON: Yea, alright. Aurea want to talk to you for a second.

GLORIA: Hello., yes.

DET. B: Yea, Gloria.

AUREA: Yea.

DET. B: What happened?

AUREA: Well the guy first called this morning. The stuff they had was not good.

DET. B: Yea.

AUREA: But he say he will call tonight. Call me about 8 o'clock.

3-1930

DET. B: Oh he's going to call you.

AUREA: Yea.

DET. B: Oh alright, is there a possibility that we're going to go tomorrow?

AUREA: Yea, yea.

DET. B: Alright, good. Now listen you know what the important thing is Gloria.

AUREA: Yea.

DET. B: The important thing is if it's no good, we'll cancel it.

AUREA: Yea - alright.

DET. B: Because, huh, it doesn't make any difference that the - - I don't want to invest my money.

AUREA: - - - Mm, Mm.

DET. B: On top of a bad thing.

AUREA: Yea.

DET. B: O.k.

GLORIA: Huh, huh?

DET. B: Because we already sent someone out there.

D-6

84A

3-1930

AUREA: Yea.

DET. B: So now we're waiting for him to call and we're going to tell him to hold on.

AUREA: Yea, alright.

DET. B: So listen, I let my cousin Frankie call you, what time is good?

AUREA: About 9.

DET. B: About 9 o'clock?

AUREA: Yea.

DET. B: You're going to have an answer for him?

AUREA: Uh huh.

DET. B: Alright.

AUREA: Alright.

DET. B: Alright, very good.

AUREA: O.k.

DET. B: Huh, don't forget next Tuesday, alright?

AUREA: Alright. Ramon says to call him up later at his house.

3-1930

DET. B: Alright. I'll have Frankie give him a call.

AUREA: Oh, o.k.

DET. B: Alright.

DET. B: Alright, Gloria so you going to find out about
8 o'clock?

AUREA: Yea.

DET. B: O.k., very good.

AUREA: Alright.

DET. B: Alright, bye, bye.

AUREA: Bye.

END OF CONVERSATION

MBM:1q
03-1930

C.T. 76-0259
Ex. F. 2/3/77

6X 18

DET. B: Today is February 3, 1977. I am Det. John Bruno, shield # 3264, case number C.T. 76-0259. I am about to place a telephone call to Juan Ramon Vasquez at 212-475-8951, and have a conversation with him relative to the purchase of Ex. 5 in Chicago, Ill.

FEMALE: Hello.

DET. BRUNO: Hello, how are you? Is Ramon there?

FEMALE: Whose's this?

DET. B: This is John.

FEMALE: Oh, wait.

[Background speaking Female calling Ramon]

RAMON: What's happening?

DET. B: Ramon?

RAMON: Yea.

DET. B: This is John. What the hell happened?

RAMON: You call Aurea?

DET. B: She's not home.

RAMON: Uh, I was there before and she no was home.

F-1

87A

03-1930

JOHN: Yea, Listen, let me ask you - - -

RAMON: Yes?

DET. B: Be honest with me Ramon, is this thing going to happen or what?

RAMON: It's going to be happen, but huh even Mr. Roche man is still there.

DET. B: Mr. Roche man is still there?

RAMON: Yea, - - - it's going to be a panic.

DET. B: It's going to be a panic?

RAMON: Yea.

DET. B: Well this is the time we got to start to do something good, because this is the time you got to make money.

RAMON: Yea, but see what, what happened. I don't know what happened over there. You understand what I mean.

DET. B: Yea.

RAMON: Mr. Roche man, my brother-in-law Dino.

DET. B: Yea.

RAMON: He's going over there right?

DET. B: Right. Oh he went there for Mr. Roche.

MBM:lq
03-1930

RAMON: Yea. He do it that deliveries.

DET. B: Oh he makes the deliveries for him.

RAMON: Yea.

DET. B: Oh!! Listen.

RAMONE: Huh?

DET. B: Why can't we use Dino then? If he's got people over there just as good, then we don't need Gloria.

RAMON: Huh, He's my brother-in-law but the - - he don't do it.

DET. B: No- Huh.

RAMON: No, do you know why because he never going to do that to the "old man".

DET. B: Oh I see, He wouldn't do that to the "old man".

RAMON: He work for him.

DET. B: Oh is there some way we could make some kind of arrangements with Mr. Roche.

RAMON: He's a son of a bitch.

DET. B: Well maybe if we sit down and have a couple of drinks with the man, you know and we discuss this thing, you know we make him understand that we're not going to interfere with anything that he got or we're looking for is a new market.

RAMON: Yea, but listen.

03-1930

DET. B: Yea.

RAMON: Huh, what happened if that right now the thing over there is no good?

DET. B: Yea.

RAMON: The quality.

DET. B: Yea, no, no I understand, I understand about that, yea.

RAMON: You know.

DET. B: But the thing is Ramon, you know my man is on his way back now.

RAMON: Yea

DET. B: Because you know we sent a lot of money out there and I feel embarrassed. There's people I have to do some explaining to and I got to pay the vig on this thing now.

RAMON: Huh - huh.

DET. B: You know when I get their money, I don't like to give it back to them.

RAMON: Yea, I - I -----

DET. B: I like to hold on to it so I get the business done.

RAMON: Well let me, listen.

DET. B: What?

03-1930

RAMON: I'm going to the restaurant to find out where that lady are, you know.

DET. B: Alright go see, huh, huh, Gloria and find out what's happening.

RAMON: I was in her house last night.

DET. B: Inaudible - because this is causing us a lot of embarrassment.

RAMON: Yea, inaudible.

DET. B: This is not way to conduct a business, you know that right.

RAMON: Yea, you know the way I feel -- I feel bad myself.

DET. B: Oh, I know listen, I don't blame you, listen I have a lot of respect for you.

RAMON: Thank you John, but when she told me the thing over there was not too good, I didn't want to bother.

DET. B: Yea.

RAMON: You understand that's why I told her.

DET. B: Listen, I understand, I appreciate that you're looking out for my benefit.

RAMON: Because let me explain to you something, John when I do something with anybody, I like to have satisfaction with what he gets.

DET. B: Yea

RAMON: Because I expect him to come back.

DET. B: Of course this is the whole point of the whole business over here. I want something regular, I want something steady. You tell me you're in business five years from the same people, I'm very happy with that.

RAMON: You understand.

DET. B: This is what I like, you know what I mean.

RAMON: Yea.

DET. B: I'm in the market for this product.

RAMON: But.

DET. B: And believe me, I'm a good customer.

RAMON: Yea.

DET. B: These people will be very happy with me and like I told you before, if I eat you'll eat, Gloria will eat, everybody eats because there's plenty of money to be made here, you know what I mean.

RAMON: Well let me ask you something, you pay \$800 over there?

DET. B: Yea.

RAMON: For an ounce, right?, I mean for the shirts & pants

DET. B: Right.

RAMON: Now, how if I get it for you here for a thousand?

03-1930

DET. B: Well we would have to talk about that.

RAMON: You understand my point of view.

DET. B: No. No I understand, I understand, right. But you see what I'm also figuring is this, you know the shirts we bought before you know we sold these shirts and we made money on them, but they had little tears in them here and there. The quality of the material wasn't that good.

RAMON: Huh.

DET. B: You know that yourself.

RAMON: Yea, I know.

DET. B: Alright.

RAMON: Yea.

DET. B: So lets see if we could get this thing over this in Chicago if it's a better thing as well and good if not because it's would it for me to spend another 2 or 3 dollars you know for each shirt.

RAMON: Yea.

DET. B: To do it over here because frankly, I don't like to go out of town to do this because now these things might happen again. Here I am holding a 120 large --

RAMON: Mm - Mm.

DET. B: Right which I had to reach out to some very good friends.

RAMON: Mm ---

DET. B: And now I got to be embarassed in front of my whole family because this thing didn't happen.

RAMON: Mm----

DET. B: And now I got to be embarassed in front of my whole family because this thing didn't happen.

RAMON: Huh - h

DET. B: And now I got to do some talking, it's nothing that I can't handle, it will be handled.

RAMON: Uh.

DET. B: But, why do I got to be caused this embarassment.

RAMON: Uh - huh.

DET. B: You understand (In Italian) in Italian they say
- - - - - inaudible - - - - - alright, so now what
we got to do is work this out so if Gloria can get
things going, it will be alright.

RAMON: You see what happened. Let me explain. I was mad yesterday when I was in her house.

DET. B: Yea.

RAMON: You know, listen John, I don't bullshit.

DET. B: I know that.

RAMON: I'm a dangerous man you know.

DET. B: I know that, that's why I have a lot of respect for you.

RAMON: You know I don't like games. I don't play games.

DET. B: Of course not. Why do you think I come over there my cousin Frankie told me you were good people. You take him in your house. Your family is there, listen a person like that to me is a very honorable person and this is why I have a lot of respect for you. Listen, we sat at the same table. We ate bread. We ate food.

RAMON: Yea.

DET. B: We drank everything, this is the way I like it and this is the way I want it to continue to be.

RAMON: Did you see what I was sit down there. I don't say to much.

DET. B: Yea, no listen. I appreciate it. That's why I feel that with you I have a good friend.

RAMON: Yea.

DET. B: And I want to keep it that way.

RAMON: Yea.

DET. B: And what I want to do is get the business going this way, we all eat.

RAMON: Yea.

DET. B: Alright.

RAMON: But I'm going try to reach her tonight. Call me anytime tonight. I'm going to find out what's going on.

DET. B: Alright, now listen.

RAMON: Because when she told me the things over there it was like a mold you know what a mold is?

03-1930

DET. B: No.

RAMON: You know when put an old suit, did it's like a mold you know.

DET. B: Oh yea, yea, yea, yea.

RAMON: Its' no - inaudible - at the base you know.

DET. B: Yea.

RAMON: You know what I'm talking about.

DET. B: Yea, I understand yes, yes.

RAMON: But I say no, you know.

DET. B: Very good.

RAMON: Because I told them you know I say these people are my friends and I won't get them involved with this kind of shit.

DET. B: Right.

RAMON: Then she called back to the people you know.

DET. B: Right.

RAMON: And told them that they get something better to call back, but I don't know if the people called 1-st night back or not.

DET. B: Oh so, here's what you do.

RAMON: Yea.

06A

DET. B: Get in touch with her I let Frankie call you maybe in a -----

RAMON: Frankie called me this morning.

DET. B: Oh he called you this morning, yea, he's not feeling good.

RAMON: Yea, the voice sounded kind of strange.

DET. B: He's not feeling good, you know. Now listen, you know what I'm going to do? I'm going to have him call you a little later. I'm going to tell him to give you the telephone number so you can call us if anything is going to go alright.

RAMON: Yes, this is what happened you know because I can't get in touch with all of you. I don't know where I can get you.

DET. B: I'll tell Frankie to give you a telephone number where you can get in touch with us.

RAMON: Don't worry about it. You give it to me that's mine.

DET. B: Understand that now? If we give you the telephone number, it belongs to you. I don't want no one to have it, not even Gloria.

RAMON: No, no, no, I don't do that kind.

DET. B: Alright.

RAMON: I don't do that thing.

DET. B: I don't want nobody you should as a matter of fact I want you to camouflage the number you change the number around to you understand it and no body else.

03-1930

RAMON: Right, right.

DET. B: If anyone should find it, you say it's your cousin who ever it is alright.

RAMON: Right, o.k.

DET. B: Ramon listen, so you going to see Gloria now.

RAMON: Yea, I'm going to get dressed you know because I call later.

DET. B: Yea.

RAMON: Don't worry, John, be patient everything with patient will work right.

DET. B: You see I want you to understand one thing. I am a very patient man, that's why I'm in this business for so many years, you know _____ the thing is this.

RAMON: Yea.

DET. B: But the thing is this, if we say we're going to do something and then I go ahead and say yes everything is alright, we do a thing and I get ready and I send all that money out there and then this happens, it's not that I'm impatient, I'm not even angry because this is the business, but I'm disappointed.

RAMON: But you see what happened, after we go there to the restaurant I was sleep, you know.

RAMON: Yea, and she call me, you know.

DET. B: Right, right.

03-1930

RAMON: And she say well listen, the people over this in that territory say that thing is like that, like that you know.

DET. B: Yea.

RAMON: And I say I don't want that you know.

DET. B: Alright that's good, alright listen Ramon.

RAMON: Huh.

DET. C: You're going to see Gloria now?

RAMON: Yes.

DET. B: Alright so Frankie call you maybe about five o'clock.

RAMON: Right.

DET. B: O.k. He will call you at 5 o'clock.

RAMON: Listen.

DET. B: What?

RAMON: I go to her house, I'll tell her you know when you call I was in her house.

DET. B: Oh yes, yes, that's right.

RAMON: Yesterday I don't like these things. I say I'm a man, a man of my word.

DET. B: Right.

RAMON: But she suppose to call those people last night.

DET. B: Yea.

RAMON: So find out what happened, then she told me you're the people told her yes, we leaving tonight but I don't hear nothing from her yet.

DET. B: Alright so what you do is find from her for sure then we give you a call and the Frankie will give you a call and he will give you the number where to call us.

RAMON: Even if we're leaving tomorrow, there's no.

DET. B: Listen, there's no as long as you give me a little time so I can do the same thing. I'll send my people out there.

RAMON: Yea.

DET. B: When I'll know that everything is ready over there. You know.

RAMON: Mm - Mm.

DET. B: Inaudible - (in Italian)

RAMON: Yea.

DET. B: O.k. so we have the people out there and then we go there's no problem.

RAMON: O.k.

DET. B: Alright Ramon then I'll be talking to. You maybe in a couple of hours.

03-1930

RAMON: Alright.

DET. B: Alright.

RAMON: O.k.

DET. B: Bye, bye.

RAMON: Bye.

END OF CONVERSATION

F-15

101 a

RAMON: No Dino bring it to the old man and we but it from him here, understand my brother-in-law bring it from the old man

DET B: From over there --

RAMON: From over there --

DET B: From Chicago

RAMON: Yea but when he bring it, its no good we give it back

DET C: Let me ask you this Ramon, this is for my own information, the 16 we bought that day is that his stuff

RAMON: Mm-

DET C: It was his stuff

RAMON: Mm ---

DET C: Because not for anything thats why I like to know --

RAMON: You see

DET C: That was, we paid a lot of money I don't know what you made but I hope you made your money on the deal because that stuff there wasn't so good

RAMON: No, no good inaudible ----

DET B: See, see ,

RAMON: Inaudible you understand - inaudible I don't deal that thing I got a guy who stays 24 hours a day he sells for me, he works for me and I pay his salary and I don't touch nothing

MBM:1nd
77-0573
03-1978

6X 20B

's

DET B: So in other words we are going to do business now
its not people that are just ...

RAMON: No, no

DET B: These are people who have already done business
with Gloria, they know everything

RAMON: Yea

DET B: Ah - that a different story, because you see what I'm
scared of this is somebody new and they get funny
ideas

RAMON: No, no, no

DET B: I hope you understand we got to protect

RAMON: Let me tell you something I hope I drop dead I
know two face

DET B: No

RAMON: Im a man if anything happen

DET B: Ramon

RAMON: I'll blow there fucking brains out

DET

6X 206

Det. C How many people you have working for you
Ramon; how many people can you depend on --

Ramon Well, I use to have 14 people working for
me and I had this -- when I came out. I
had one man, huh, that man sell for me a
thousand dollars every day. I don't need
no more a thousand every day unaudivle

Det. B Mm --

Ramon You know what I mean -inaudible

Det. B Inaudible

Ramon By now -- inaudible

Det. C But how many men can you depend on--
to be on your side

Ramon Men - about 25 people on my side

Det. C On your side

Ramon In this neighborhood

Det. B I don't want to, to start no big - - -

Ramon No, no you know

Det. B Slow, slow

Ramon I bought a club last night

Det. B Slow -

Ramon Inaudible- Avenue C and 11th Street.

MBM:lnd
77-0573
03-1978

Det. C What two clubs.

Ramon Yea

Det. C After hour

Ramon After hour - , bought one for \$1200 and one
for \$2000. I going to put people there to
sell an ounce, and eight - you know

G-30

105A

MBM:bg
77-0573
03-1978

6X 20D

Ramon You know my sister, she took a hundred --
Auria - Come on in --

Det. B Hello, sit the steps, I know, no to -
inaudible

Auria The guy call me up and says he having it
for tonight. I told him to wait for
tomorrow morning - inaudible

Det. B What about the quality

Auria Oh yea, he said it was very good,

Det. B It's ok now

Det. C How many

Auria Three

Det. C Can he get the fourth one

Auria Yea, he's going to call me at 10 O'clock
tonight to know what time I'm getting
over there.

Ramon But you sure we leaving tomorrow

Auria Yea

G-31 106A

MBM:bg
77-0573
03-1978

Ramon -- Alright, that's the important thing,
because

Auria Inaudible

Ramon We want to go over this business, the
money --

Det. B I want to do it fast and want to come back.

Auria Inaudible - that's what he told me

Ramon Because we don't want to go over this
and wait -- late, you know, other thing be
sure we leaving tomorrow because I don't
like this game either --

Auria Everything is working out now

BM:1nd
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Det. B Frankie, can you work out that thing over there

Det. C I got to get a commitment. Is this for sure.

Auria Yea, for sure tomorrow, at one o'clock.

Det. C We got to be there at one o'clock

Auria Yea

Det. B That means we got to leave in the morning -

Auria But this way we come back in the afternoon - or night

Det. B Do you think you could get things together You know because we had him over there yesterday he came three o'clock. He came came back

Auria In background talkin - inaudible

Auria Call me up - - 1:30 and told me everything was ready. I told him not today but tomorrow. He said alright.

Det. B The people over there can be trusted.

Auria Yea

Ramon She's been doing business with these people for about five years --

G-33

108A

Auria

I once went there for two weeks and spent money in the hotel and everything and everything they brought me something it was no good. unaudible money I stood there for two weeks.

Ramon

Unaudible

Auria

they call me up today and say the big guy was in this morning but they have to go over this place and do it by tonight everything is ready that's why we can't go tonight and they going to call me a 10 o'clock tonight to see what time we be there -

Det. B

Listen I hope I don't upset you husband when I call you -

Auria

No

Ramon

No

Det. B

No because I don't want to show - no disrespect. Do you know what mean -

Ramon

He know the angles.

CONVERSATION #4

Det. C: Ramon
Ramon: Hello.
Det. C: Ramon.
Ramon: Hello.
Det. C: Ramon, Hello, Ramon.
Nydia: Hello.
Det. C: Hello Ramon.
Nydia: Whos this?
Det. C: Frankie.
Nydia: Oh.
Ramon: Hello.
Det. C: Hello, Ramon.
Ramon: Yes.
Det. C: Frankie, everything is O.K.
Ramon: You called.
Det. C: I just called the lady and huh we got everything is fine huh we meet tomorrow morning at a quarter to ten.
Ramon: Over here.
Det. C: Yea in your at your house?
Ramon: Were leaving at ten o'clock tomorrow.
Det. C: Were leaving at 11 o'clock.
Ramon: 11 o'clock.
Det. C: So I meet you at a quarter to ten and we will go to the airport.
Ramon: O.K.
Det. C: O.K.

Ramon: Huh 11 o'clock in the morning.

Det. C: Were leaving, were flying out at 11 o'clock we will pick you up at a quarter to 10 I told the lady to meet at your house.

Ramon: Uh-uh.

Det. C: To be at your house at a quarter to 10.

Ramon: Alright what I do I'll take my car to the airport an leave it there.

Det. C: O.K. you know what we do we take two cars to the airport.

Ramon: Alright.

Det. C: O.K. now listen.

Ramon: Huh.

Det. C: Everything is good for four.

Ramon: Yea.

Det. C: O.K. see we got the 120 big ones. I'm sending the man out tomorrow morning.

Ramon: Uh-uh

Det. C: O.K.

Ramon: Alright.

Det. C: So I'll see you tomorrow morning.

Ramon: I'll see you, good luck.

Det. C: You to, be careful tonight Poppi.

Ramon: Alright I stay home.

Det. C: Stay home tonight because we got business tomorrow O.K.

Ramon: O.K.

Det. C: I see you tomorrow morning.

Ramon: O.K. Bye

Det. C: Bye, Bye

END OF CONVERSATION

BLOCK

AFFIDAVIT OF PERSONAL SERVICE

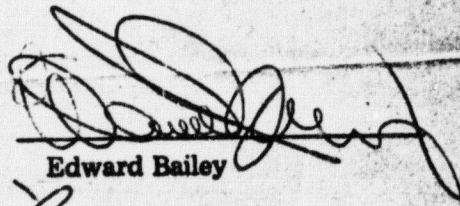
STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

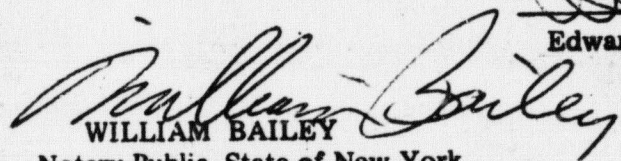
EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 15 day of Dec. 19 77 at No. 1 St. Andrews Pl., NYC

deponent served the within ~~Block~~ Appendix upon U.S. Atty., So. Dist. of NY

the Appellee herein, by delivering 1 true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me this
15 day of Dec. 1977


Edward Bailey


WILLIAM BAILEY
Notary Public, State of New York
No. 48-0132945
Qualified in Richmond County
Commission Expires March 30, 1978